United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

Original

76-7095

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P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-7095

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiffs-Appellees,

—against—

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION,

Defendants-Appellants.

Appeal from the United States District Court
For the Southern District of New York

APPENDIX

[Volume I—Pages 1A to 315A]

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Co-Counsel for New York Telephone Company

UNITED STATES COURT OF APPEALS
FILED
MAR 24 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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INDEX TO APPENDIX

	Page
Relevant Docket Entries	1A
Summons and Complaint	4A
Order to Show Cause	25A
Affidavit of Jonah Triebwasser in Support of Rule 65 Motion	28A
Transcript of Hearing before Judge Tenney	44A
Affidavit of Patrick F. Walsh	60A
Affidavit of James R. Bennett	67A
Affidavit of William F. McGarty	94A
Subpoena Duces Tecum Addressed to American Telephone and Telegraph Company	101A
Subpoena Duces Tecum Addressed to New York Telephone Company	103A
Affidavit of William Katz	105A
Transcript of Hearing before Judge Cannella	156A
Testimony of William Katz	213A-282A
Affidavit of Patrick F. Walsh of Transcript Corrections	291A
Order of February 25, 1976 granting preliminary injunction	295A
Order of February 26, 1976 reducing plaintiff's bond	297A
Opinion of February 26, 1976	298A
Order of March 5, 1976 substituting counsel	313A
Notice of Appeal	314A
Order of March 12, 1976 granting expedited appeal	315A

Page

Exhibits admitted at hearing before Judge Cannella

Plaintiff's Exhibit 1 - Subpoena addressed to the New York Telephone Company (marked as Respondents' Exhibit A)..... 316A

Plaintiff's Exhibit 2 - Subpoena addressed to AT&T (marked as Respondents' Exhibit B)..... 319A

Plaintiff's Exhibit 1A - Note addressed to Patrick Walsh, Esq., indicating when N.Y. Telco subpoena was served (marked as Respondents' Exhibit A1)... 322A

Defendants' Exhibits C and D - Business cards of Messrs. Finegan and Bertinetti (marked as Petitioner's Exhibits 1 and 2)..... 324A

Plaintiff's Exhibit 3 - Order for Director Representation (3 pages) (marked as Petitioner's Exhibit 3)..... 326A

Plaintiff's Exhibit 4 - Four pages bearing the hea "Investigators - Private" (marked as Petitioner's Exhibit 4)..... 330A

Plaintiff's Exhibit 5 - Advertising copy submitted by Triebwasser and Katz (marked Petitioner's Exhibit 5)..... 335A

Plaintiff's Exhibit 6 - Advertising copy submitted by Triebwasser and Katz (marked as Petitioner's Exhibit 6)..... 337A

Plaintiff's Exhibit 7 - Cover and page 377 of 1975-76 Michigan Bell Telephone Directory for Ann Arbor - Ypsilanti area (marked as Petitioner's Exhibit 7)..... 339A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ, Plaintiffs, -against- AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION, Defendants.	76 Civ. 770 (JMC)

RELEVANT DOCKET ENTRIES

02-17-76 Filed complaint and issued summons.

02-18-76 Filed pltffs' Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction - that pltffs. post security in the sum of $10,000. Ret. 02-23-76 at 9:30 a.m. TENNEY, J.

02-23-76 BEFORE CANNELLA, J. NON-JURY TRIAL BEGUN on Preliminary injunction and concluded. Judge's decision - reserved. Both sides to submit briefs on 02-24-76 by 4 P.M.

02-26-76 Filed Order - pltff's motion for a preliminary injunction is granted - the defts. are enjoined as indicated -- this matter will be set down for trial at the earliest date which is mutually convenient

to the parties - the pltff. shall post a bond in the amount of $10,000. by 5:00 p.m., 2-26-76 - the Court will not grant a stay pending appeal - and findings of fact and conclusion of law as required by Rule 52(a) FRCP will be filed shortly. So ordered - CANNELLA, J. (m/n)

* * *

02-27-76 Filed answering and supplemental affdvt. in support of pltff's motion for a preliminary injunction.

02-27-76 Filed defts' affdvt. of Patrick F. Walsh in opposition to pltffs' motion for a preliminary injunction.

* * *

02-27-76 Filed Opinion # 43959 -- for the reasons stated, the Court concludes that the pltffs have clearly shown serious questions going to the merits which are a fair ground for litigation, and a balance of hardships tipping decidedly in their favor. The foregoing constitute the Court's findings of fact and conclusions of law upon pltffs' application for a preliminary injunction. Pltffs' motion for a preliminary injunction is granted. So ordered - CANNELLA, J. (m/n)

02-27-76 Filed Amended Order - that the Court's order dated 02-25-76 is amended as follows -- the am't of the bond to be posted by the pltff. is reduced from $10,000 to $5,000, and the deadline for the posting of that bond is extended from 5:00 P.M. on 2-26 until 3:00 P.M. 2-27, 1976. If a bond in the am't of $5,000 is not posted by that time, the preliminary injunction previously granted will automatically be dissolved. So ordered - CANNELLA, J. (m/n)

02-27-76 Filed Undertaking on Injunction in the sum of $5,000.00 - National Surety Corp.

* * *

03-05-76 Filed Order -- that the firm of Cleary Gottlieb Steen & Hamilton are substituted for George E. Ashley as attys for defts AT&T and the R.H. Donnelly Corp. and that said firm is added as co-counsel with Mr. Ashley for the deft. N.Y. Telephone Co. So ordered - CANNELLA, J. (m/n)

03-05-76 Filed defts: A notice of appeal to the USCA from the order granting pltff's motion for a preliminary injunction, entered on 02-25-76 and modified on 02-26-76. Copy to: Brashich, Finley & Postel. Ent. 03-05-76.

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

- x

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiff,

-against-

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION,

Defendants.

JUDGE CANNELLA
76 CIV. 770

SUMMONS

- x

To the above named Defendant :

You are hereby summoned and required to serve upon BRASHICH, FINLEY AND POSTEL, plaintiff's attorney , whose address is 501 Madison Avenue, New York, New York 10022, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Raymond F. Burghardt
Clerk of Court.

s/ G. Harbison
Deputy Clerk.

[Seal of Court]

Date: Feb 17, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

TRIEBWASSER AND KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiff

-against-

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY AND REUBEN H. DONNELLY CORPORATION

Defendants.

- -X

COMPLAINT

Plaintiff, TRIEBWASSER AND KATZ, by their attorneys, BRASHICH, FINLEY and POSTEL, complaining of the defendants respectfully alleges to this Court as follows:

FIRST: Plaintiff, TRIEBWASSER AND KATZ, is a partnership existing by virtue of the law of the State of New York, and consists of one JONAH TRIEBWASSER and one WILLIAM KATZ, such partnership having come into existence on or about December 4, 1975, and such partnership maintaining its principal place of business as Two West Forty-fifth Street, Borough of Manhattan, City, County and State of New York, within the territorial jurisdiction of this Court.

SECOND: The defendant, AMERICAN TELEPHONE AND

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2) PLAZA 5-1500

TELEGRAPH COMPANY, hereinafter A.T.& T., is a corporation organized and existing by virtue of the laws of the State of New York, which maintains its principal place of business at 195 Broadway, Borough of Manhattan, City, County and State of New York, within the territorial jurisdiction of this Court.

THIRD: The defendants, NEW YORK TELEPHONE COMPANY, hereinafter, NEW YORK TELCO, is a corporation organized and existing by virtue of the laws of the State of New York, which maintains its principal place of business at 1095 Avenue of the Americas, Borough of Manhattan, City, County and State of New York, and is upon information and belief, a wholly owned subsidiary and creature of the defendant, A.T.& T.. Further, upon information and belief, the defendant NEW YORK TELCO exists, is licensed by and is wholly controlled by an agency of the State of New York to wit, the Public Service Commission of the State of New York.

FOURTH: The defendant, REUBEN H. DONNELLY CORPORATION, hereinafter DONNELLY, is the exclusive agent of defendant NEW YORK TELCO, and thus of defendant A.T.&T., and has been charged with and who has exclusive right to sell space, advertisements and listing in certain publications owned, published and disseminated by defendant NEW YORK TELCO, commonly known as

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21 PLAZA 5-1500

"THE YELLOW PAGES". The defendant DONNELLY is a corporation existing by virtue and pursuant to the laws of the State of New York, and maintains its principal place of business at 825 Third Avenue, Borough of Manhattan, City, County and State of New York.

FIFTH: The jurisdiction of this Court is respectfully invoked in accordance with title 28 U.S.C. 1331(a) in that the matter in controversy exceeds the sum of TEN THOUSAND ($10,000.00) DOLLARS, exclusive of interest and costs and further arises under the provision of title 15 U.S.C. 1 et seq; jurisdiction of this Court is further respectfully invoked pursuant to the provisions of title 28 U.S.C. 1343 in that the matter in controversy arises pursuant to the provisions of title 42 U.S.C. 1983 et seq.

AS AND FOR A FIRST DISTINCT CAUSE OF ACTION

SIXTH: Plaintiff repeats and realleges each and every allegation set forth in paragraph FIRST through FIFTH inclusive, as if set forth hereat at length.

SEVENTH: Plaintiff, TRIEBWASSER AND KATZ, at all times herein mentioned was engaged in the business of a licensed private investigator, having been duly issued said license pursuant to the provisions to article seven of the General

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Business Law of the State of New York, said license having duly issued on or about January 14, 1976, bearing number 14986, expiring and terminating on or about January 13, 1978.

EIGHTH: The plaintiff, TRIEBWASSER AND KATZ, either in its guise of a partnership, or prior to December 4, 1975 in the individual capacities of the partners, JONAH TRIEBWASSER and WILLIAM KATZ, or in their prior business associations and dealings relative to private investigation have never been convicted of any crime, have never been arrested for any crime, nor have they been either in their individual capacities or in their style of partners, been subject to any disciplinary proceedings, complaints, or inquires by either the Attorney General of the State of New York, the Attorney General of the United States, the Secretary of State of the State of New York, the Department of Consumer Affairs, or in fact have any complaint, inquiries, grievances or charges been lodged with the defendants as against the plaintiffs.

NINTH: The defendant NEW YORK TELCO is a corporation which is engaged in the business of providing telephone communication to the general public within the State of New York. In additional to its business of telephone communication, it also causes to be published two types of directories of its subscribers. Such directories are published for clearly defined geographical

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areas, for example one of each for the five counties comprising the City of New York. The directories for each such distinct geographical area are one, a directory of all subscribers both commercial and residential, hereinafter "WHITE PAGES", and a direcotry of commercial subscribers which allows for and comprises in additional to such commercial listings, display advertisements inserted therein, paid for by such commercial subscribers. The latter directory is commonly known as the "YELLOW PAGES". and at the sole and absolute discretion of the defendant NEW YORK TELCO these may be bound separately from the WHITE PAGES, or in the alternative may be bound jointly with the WHITE PAGES.

TENTH: The defendant NEW YORK TELCO has appointed as its sole and exclusive agent for the solicitation of advertisment in the YELLOW PAGES the defendant DONNELLY.

ELEVENTH: On or about the fourth day of February, 1976, the plaintiff attempted to insert and to cause to be published a certain advertisement in the YELLOW PAGES to be published for the geographical area of the County of Queens. A true copy of such proposed advertisement is attached hereto as EXHIBIT A. Such advertisement is not in controvention of any applicable civil or penal statute of either the State of New York or of the United States, and advertises and offers

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services which are fully within the bounds of both propriety and legality.

TWELFTH: The defendant DONNELLY, upon consultation with defendant NEW YORK TELCO, refused to permit such advertisement to be inserted within the said YELLOW PAGES for the County of Queens, objecting to and finding objectionable the following legend: "WE CAN DETECT AND REMOVE UNWANTED AND ILLEGAL ELECTRONIC LISTENING DEVICES FROM YOUR TELEPHONES, HOME OR OFFICE."

THIRTEENTH: Such refusal by defendants DONNELLY and NEW YORK TELCO was totally contrary to their promulgated and published terms and conditions for directory representation, and specifically paragraph 15. A true copy of which is attached hereto and made part hereof as EXHIBIT B.

FOURTEENTH: The defendants DONNELLY AND NEW YORK TELCO refused and rejected the plaintiff's advertisement relying upon certain internal rules and regulations of defendant NEW YORK TELCO, a true copy of such rules and regulations being attached hereto and made part hereof as EXHIBIT C.

FIFTHTEENTH: The defendant NEW YORK TELCO, as and for a service to its paying subscribers and clients provides

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electronic telephone security surveys, commonly known as "debugging". Such services are provided any subscriber of the defendant NEW YORK TELCO who requests the same. Such services are paid for by the general public under general overhead expenses and the defendant NEW YORK TELCO is reimbursed therefore by appropriate filings and schedules approved by the Public Service Commission of the State of New York.

SIXTEENTH: The plaintiff, TRIEBWASSER AND KATZ, due to the training and prior experience of its principals, JONAH TRIEBWASSER and WILLIAM KATZ, are experienced in and are able to offer to the general public not only telephone security surveys, commonly known as "debugging", but are also able to detect other unwanted and illegal electronic listening devices from telephones, homes or office and further furnish additional services such as Countermeasures Surveys and Inspections of premises and the like, which services are totally legal and in accordance with applicable, pertinent civil and criminal statutes of the State of New York and the United States.

SEVENTEENTH: The defendant NEW YORK TELCO and plaintiff TRIEBWASSER AND KATZ, in this area of services alone are offering to the general, at once, one identical service, to wit telephone security surveys, commonly

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known as "debugging", while plaintiff is further able to furnish additonal services which the defendant NEW YORK TELCO will not or cannot provide the general public.

EIGTHTEENTH: The defendant A.T.& T. and the defendant NEW YORK TELCO have confederated and conspired together for the purpose of preventing any individual, firm or entity from entering on, advertising for or otherwise offering to the general public such telephone security surveys and have done so by carefully and systemically controlling and restricting access to those advertising media under their exclusive ownership and control, namely the directories published by the defendant NEW YORK TELCO.

NINETEENTH: That the defendants NEW YORK TELCO, A.T.&T. AND DONNELLY have confederated and conspired together to restrain the trade and commerce that the plaintiff wishes to engage in and inter-state commerce in that the telephone service and telephone directories are clearly disseminated in such inter-state commerce and whereby the effect of such discrimination is to preclude any competition and to allow a continuance of the de facto monopoly in this line of commerce now enjoyed by the defendants.

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TWENTIETH: That the acts, complained of, of defendants A.T.& T., DONNELLY and NEW YORK TELCO have injured, destroyed and prevented competition and that the plaintiffs have sustained injuries as a result thereof in the sum of ONE MILLION ($1,000,000.00) DOLLARS.

AS AND FOR A SECOND AND DISTINCT CAUSE OF ACTION

TWENTIETH-FIRST: Plaintiff repeats and realleges each and every allegation set forth in paragraphs FIRST through TWENTIETH, inclusive of the complaint as if set out in full hereat.

TWENTIETH-SECOND: The defendant NEW YORK TELCO exists by virtue of and pursuant to license duly issuing from the State of New York in accordance with chapter 48 of the Consolidated Laws, the Public Service Law.

TWENTY-THIRD: The defendant NEW YORK TELCO is thus limited, licensed, and controlled by the Public Service Commission of the State of New York in accordance with section 94 et seq. of the Public Service Law of the State of New York.

TWENTY-FOURTH: That withstanding the fact that

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the defendant NEW YORK TELCO exists by the virute of and at the mercy of the New York State Public Service Commission said Public Service Commission has refused and has abrogated its power relative to enforcing, reviewing or in any way regulating the defendant NEW YORK TELCO's actions relative to the publication of and dissemination of the YELLOW PAGES.

TWENTY-FIFTH: Inter alia, this is an action for a declaratory judgement and an injunction to prevent the further deprivation under color of state law, regulation, custom or usage of rights, priveleges and immunities secured by the first, fifth and fourteenth amendments to the Constitution of the United States guaranteeing to all persons freedom of speech, due process of law and equal protection of law.

TWENTY-SIXTH: Defendants' refusal to publish the plaintiff's advertisement is arbitrary and capricious and it is an unwaranted intrusion in the right of free speech in a publication which exists solely as a result of defendant NEW YORK TELCO's license and grant of monopoly within the jurisdiction of the State of New York of telephone services to the general public.

TWENTY-SEVENTH: Defendant NEW YORK TELCO's refusal

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to publish and to accept plaintiff's advertisement, based on arbitrary, capricious and totally different standards than those set for other industries, professions and businesses, is a denial of due process of law and equal protection of the law.

TWENTY-EIGHTH: Plaintiff has been aggrieved by the defendants NEW YORK TELCO, A.T.& T., and DONNELLY's acts which are a conspiracy to deprive plaintiff of its constitutionally guaranteed right of free speech, due process and equal protection.

AS AND FOR A THIRD AND DISTINCT CAUSE OF ACTION

TWENTY-NINTH: Plaintiff repeats and realleges each and every allegation set forth in paragraphs FIRST through TWENTY-EIGHTH, inclusive, as if set forth hereat at length.

THIRTIETH: The agreement and conspiracy by and between the defendants, DONNELLY, NEW YORK TELCO and A.T.&T. was for the purpose of unlawfully interfering with the free exercise of plaintiff's activity within the State of New York in offering for sale its services to the general

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public and the free pursuit in the State of New York by the plaintiff of its lawful business was restricted or prevented in violation of the general business law of the State of New York and in particular a section 340 thereof.

THIRTY-FIRST: The conspiracy and agreement to restrain trade hereinabove referred to in this complaint was and is in violation of the penal law of the State of New York and in particular of section 105.00 et seq. thereof.

THIRTY-SECOND: The defendants did willfully and maliciously confederate and conspire together, as aforesaid, and by reason thereof plaintiff has been totally cut off from its primary method of advertising these services to the general public and that the defendants continued refuse to allow plaintiff to use such advertising media by reason of the aforesaid conspiracy, combination and confederation. The defendants have informed plaintiff of said combination, conspiracy and have further informed plaintiff that the purpose thereof was to eliminate the competition and to maintain the good corporate image of the defendants, so as to preclude any mention of debugging or telephone security surveys to the general public

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resulting in great damage to plaintiff's business and is substantial loss of profits.

THIRTY-THIRD: The aforesaid acts of the defendants were malicious, wilfull and unlawful and without just cause and were committed by the defendants with the intent, purpose and object of preventing plaintiff from exercising its lawful trade and business, and for the purpose of interfering with plaintiff's business and were injurious to trade or commerce and unlawfully interfered with the free exercise, of plaintiff, of its marketing and sales of services in this state, and for the purpose of unlawfully and improperly eliminating the competition of plaintiff.

THIRTY-FOURTH: The plaintiff is without adequate remedy at law, and wrongful acts of the defendants herein are continuing, and the defendants threaten to continue the same.

WHEREFOR, the plaintiff demands judgement on the first and distinct cause of action as follows; judgement in the sum of ONE MILLION ($1,000,000.00) DOLLARS on the damages sustained, together with trouble damages in the sum of THREE MILLION ($3,000,000.00) DOLLARS, together with appropriate attornerys' fees in the sum of TWO HUNDRED

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AND FIFTY ($250,000.00) THOUSAND DOLLARS, together with an order if the Court so finds to be just and equitable in the circumstances directing the defendant NEW YORK TELEPHONE COMPANY in divesting itself of that portion of its business as is reflected by and known as the Yellow Pages; on the second and distinct cause of action, plaintiff demands judgement in the sum of ONE MILLION ($1,000,000.00) DOLLARS together with an injunction mandating the defendant NEW YORK TELEPHONE COMPANY accept, publish, and disseminate plaintiff's preferred advertisement in any and all of the Yellow Pages controlled, maintained and published by defendant NEW YORK TELEPHONE COMPANY and defendant AMERICAN TELEPHONE AND TELEGRAPH COMPANY; and on the third and distinct cause of action damages in the sum of ONE MILLION ($1,000,000.00) DOLLARS together with an injunction against the defendants preventing the restraint of trade, conspiracy amd unlawful practises complained of; and on all three causes of action appropriate costs, disbursements, interest and such other and further release as to this Court may seem just and proper in the circumstances.

Dated: New York, New York
February 13, 1976

Very truly yours,
BRASHICH, FINLEY & POSTEL
Attorneys for Plaintiff

By: _____
DEYAN RANKO BRASHICH
A member of the Firm
501 Madison Avenue
New York, New York 10022
212-755-1500

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we can detect and
remove unwanted
and illegal
electronic listening
devices from your
telephones,
home or office

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TRIEBWASSER AND KATZ
2 WEST 45 STREET
NEW YORK, NY 10036

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986-7330

TERMS AND CONDITIONS OF ORDER FOR DIRECTORY REPRESENTATION - RATES FURNISHED UPON REQUEST

The Applicant understands and agrees that:

1 [illegible] of the New York Telephone Company identified on the Applicant's copy of this order to [illegible] New York Telephone Company and the telephone company publishing the directory into which the representation is [illegible] New York Telephone Company (hereinafter collectively called "Company") to solicit units of representation in telephone [illegible] the Company; such units of representation being hereinafter called "unit" or "units") but is not authorized to agree [illegible] Company in any manner whatsoever not expressly provided for herein.

2 Application, the masculine includes the feminine, and where the sense requires, the neuter gender.

3 The charges shown on this order for each unit will be billed monthly during the period of the life of the directories involved but, by mutual [illegible] between the Company and the Applicant, charges for more than one month may be included on one bill. Payment will be due when [illegible] rendered. In the event that the Applicant fails to pay promptly any amount due hereunder, all amounts remaining to be paid hereunder [illegible] units in the then current issue of said directory or directories shall become due and payable forthwith.

4 Applicant may withdraw this order in whole or in part by giving written notice not later than the cancellation closing date for the directory involved. Connection or listing charges will be furnished upon request.

5 In the event the Applicant ceases to conduct the business referred to in the representation and all telephone service referred to therein is [illegible] terminated for the life of the issue, and calls are not referred or transferred to another telephone number, the Applicant [illegible] charged for such directories. In the judgment of the Company, neither the Applicant nor any successor of the Applicant receives [illegible] benefit from the continued appearance of the representation in the current issue. Termination of a listing referred to in the representation [illegible] termination of telephone answering service listing referred to in the representation, does not constitute termination of telephone service.

6 The Company, in its sole discretion, shall determine when any particular issue of a directory shall be discontinued and the succeeding issue [illegible] issued.

7 Company cannot guarantee that any Yellow Pages unit will appear on any specific page or at any specific position on a page.

8 The person signing this order warrants that he is authorized to sign it.

9 The Applicant agrees to indemnify and hold harmless the Company from and against any and all liability claims (whether [illegible] action, whether or not attributable to the negligence of the Company, and will pay all expenses, including attorney's fees, incurred by [illegible] Company in the defense thereof, arising out of the publication of any trade mark, trade name, or any name, portrait, picture or [illegible] a person in accordance with this order or any copy submitted in connection with this order.

10 While the Company will endeavor, on request, to show the Applicant proof of insertion (other than space listings) [illegible] the liability of the Applicant hereunder shall not be affected by failure to show such proof.

11 Publication of any unit in any issue of any directory specified shall constitute acceptance of this order for such unit with respect to such issue of such directory only. The omission of any unit from any issue of any directory specified shall not constitute a rejection by the Company of the order with respect to such issue of that directory. A refund shall be made of any monies paid hereunder applicable to a unit omitted from any directory, based upon the established charge for publication of such unit if it were published in that directory alone. In the event of omission from more than one of the directories specified, the total refund shall not exceed the payment made hereunder applicable to such unit. Upon making of refund as described in this paragraph 10 no other or further liability shall exist.

12 The Company reserves the right, without notice to the Applicant, to make all listings and advertisements conform with the official records of the Company as to address and telephone number, and to alter any representation in order to make it conform with the standards and practices governing the printing of telephone directories published by the Company.

13 No error or other deviation in a unit in any specified directory shall affect the obligation of the Applicant hereunder to pay for such unit [illegible] thereafter unless such error or deviation substantially diminishes the value of such unit in such directory. The liability, if any, for any error or deviation in a unit in any specified directory shall in no event exceed the established charge for publication of such unit if it alone were published in that directory alone for the period during which such error or deviation continues. In the event of error or deviation in a unit in more than one specified directory, the liability, if any, shall in no event exceed the amount which shall have been paid hereunder for such unit for the period during which such error or deviation continues.

14 The Company is not responsible for special agreements of any nature unless in writing and signed by an officer of the Company. Publication of any unit shall not constitute a waiver of this condition.

15 The Company reserves the right to restrict or refuse advertising for such periods of time as the Company in its sole discretion may decide where, [illegible] in the sole judgment of the Company the units of advertising ordered by the Applicant contain [illegible] any false statements which may serve to mislead directory users as to the Applicant's method or place of operation or violate city, state or federal regulations or [illegible] the Company had directory complaints from directory users and/or city, state or federal regulatory agencies which in the sole judgment of the Company indicate the Applicant is engaging in unethical business practices.

20A

RATES FURNISHED UPON REQUEST

EXPLANATION OF UNIT CODES

YELLOW PAGES

UNIT OF REPRESENTATION	
Service Listing (No Charge)	TC
Regular Listing Standard	TAL
Regular Listing Reference	TCT
Service Listing	TN
Business Listing	TNE
Service Listing (3 words)	TNAL
Additional Business Listing	TNEL
Additional Service Listing Provided	GRL*
Classified—Regular Listing Standard	GAL
Classified—Package Listing Provided	GAL
Classified—Extra Line Listing	GAL
Classified—Reference Listing	GAL
Custom Trade Mark Heading	GTLS
Trade Mark Heading	GTMS
Trade Regular Listing	GTMS
Trade Semi-Bold Listing	GTMS
Trade Bold Listing	GTMS
Trade Extra Line	GTMS
Additional Business Listing, Example—INDT BL	TLS

YELLOW PAGES

UNIT OF REPRESENTATION	
Trade Cross Reference	† TMS
Trade Alternate Call Listing	† 2MS
Trade Caption Text	† 3MS
Trade Name Listing	† 4MS
Trade Name Extra Line	SMS
Trade Name Alternate Call Listing	† 3MTC
Trade Name Regular Listing (Indented)	† 4MSC
Guide — Regular	SMSC
Guide — Semi-Bold	ARL
Guide — Bold	† ABL
Guide — Extra Line	† AMS
Guide — Alternate Listing	† AMS
Guide — One Line Space Listing	† AMS
Guide — ½ Inch Space Listing	† AMS
Guide — 1 Inch Space Listing	ASMS
Guide — 1½ Inch Space Listing	† AJMC
Guide — 2 Inch Space Listing	† A4MC
Guide — 2½ Inch Space Listing	A5MC
One Line Space Listing	† QC
	† DTS

YELLOW PAGES

UNIT OF REPRESENTATION	
½ Inch Space Listing	† DQC
1 Inch Space Listing	† MC
1½ Inch Space Listing	† DTC
2 Inch Space Listing	† D2MC
2½ Inch Space Listing	† DTC
1½ Inch Space Listing Caption	† D1½C
2 Inch Space Listing Caption	PQC
2½ Inch Space Listing Caption	PDTS
Anchor—Regular Listing (No Charge)	PD2C
Anchor—Bold Listing	PMC
½ Inch Anchor Space Listing	PDTC
1 Inch Anchor Space Listing	PDMC
1½ Inch Anchor Space Listing	
2 Inch Anchor Space Listing	W2L
2½ Inch Anchor Space Listing	W2½L
1½ Inch Anchor Space Listing Caption	W1½M
2 Inch Anchor Space Listing Caption	W2M
2½ Inch Anchor Space Listing Caption	W1½M
	W2½M
	W3M

YELLOW PAGES

UNIT OF REPRESENTATION	
Double Column Display	[illegible]
Double Column Display	[illegible]
Double Three Eighths Column Display	[illegible]
Double Half Column Display	[illegible]
[illegible]	[illegible]
Double Three Quarter Column Display	[illegible]
Product Service Quarter Column Display	[illegible]
Product Service Double Quarter Column Display	[illegible]
Product Service Triple Quarter Column Display	[illegible]
Product Service Half Column Display	[illegible]
Product Service Three Quarter Column Display	[illegible]
Product Service Full Column Display	[illegible]

WHITE PAGES

White Pages Listing	[illegible]
White Pages Cross Reference Listing	[illegible]
[illegible]	[illegible]
Bottom Vertical Display	[illegible]
1 Column Bottom Vertical Display	[illegible]
2 Column Bottom Vertical Display	[illegible]
3 Column Bottom Vertical Display	[illegible]

FOR OFFICE USE ONLY

CLERICAL	PRE-POSTER	COPY RELEASED	WRL UNIT	PROCESSING	SALES ACTION EXPEDITOR	TAPE WRITER VERIFIER	REGISTER OUTPUT	DISCREPANCY

BEST COPY AVAILABLE

INVESTIGATORS - PRIVATE

I There are Federal and State Laws relative to the invasion of privacy by wiretapping and using equipment to eavesdrop. The advertising of devices primarily useful for the surreptitious interception of wire or oral communications is specifically prohibited by Federal Statute.

In keeping with the spirit of the law and our continuous concern for the privacy of communication, the following revised policy is adopted effective with Rockland 7/72 issue Downstate and Upstate with Utica, 11/72 issue (Sales close 8-11-72).

A GENERAL POLICY

Advertising, whether by text or illustration, may not state or imply that wiretapping or eavesdropping is performed by the advertiser or that he has available equipment or devices for such purposes. This policy has always been interpreted as prohibiting not only advertising of wiretapping and eavesdropping devices and services but also so-called debugging advertising (i.e., advertising stating or implying devices or services will be provided for the detection and removal of wiretaps and eavesdropping "bugs") since those who can debug also generally possess, or the public believes they possess, the capability to bug and wiretap.

Names containing words that would not be acceptable in text are limited to SRL or RL. They may not be used as "list also" names or as names in text.

Some advertisements considered as a whole will be completely unacceptable although every phrase, separately considered, may meet the requirements of this policy. This is because things are omitted that should be said, or because advertisements are designed or printed in such ways (e.g., through illustrations, graphic arrangements, or size of type) as to lead the reader into believing that wiretapping, eavesdropping or debugging devices or services are available.

If a salesman feels that an advertisement falls into this category, he is responsible for referring it to Directory Standards.

Within the framework of this general policy, it is felt necessary to cover the following two specific areas because of their sensitivity.

(For an illustrative list of acceptable and unacceptable phrases see section II B)

* II "ELECTRONIC", "ELECTRIC", "MODERN" AND SIMILAR AMBIGUOUS WORDS OR STATEMENTS

The use of ambiguous phrases such as "Electronic", "Electric", "Electro", "Electronic Equipment", "Modern Aids", "Latest Devices", "Scientific Methods", "Technical Equipment", "Secret Equipment" may imply, and could readily be understood by directory users to imply that wiretapping, bugging, eavesdropping or debugging equipment is employed or is available.

(cont'd next page)

Consequently, these words or phrases may not be used in copy unless they are qualified with additional, specific descriptive information that clearly discloses that a purpose other then wiretapping, bugging, eavesdropping or debugging is being advertised.

Names containing words that would not be acceptable in text are limited to SRL or RL. They may not be used as "list also" names or as names in text.

If advertising not covered by the above is submitted and there is a question as to whether the regulation applies, the case should be referred to Directory Standards.

* 2 RECORDERS, RECORDINGS

There are a few instances where the mention of specific equipment, even though qualified, may still imply, or be readily understood by directory users to mean that wiretapping, eavesdropping or debugging services are being provided by the advertiser or that such equipment is available from him. This would include, for example, mention of such devices as recorders. While a recorder may be a component of an acceptable service, its role is normally so minor or obvious as not to warrant its being mentioned in the advertisement. Accordingly, in such instances calling attention to such recording equipment or service serves no useful purpose and could be readily understood by directory users to mean that wiretapping, eavesdropping or the like is involved. Therefore, references to "recorders", "recordings" or similar statements are not acceptable regardless of how qualified.

Names containing words that would not be acceptable in text are limited to SRL or RL. They may not be used as "list also" names or as names in text.

If advertising not covered by the above is submitted and there is a question as to whether the regulation applies, the case should be referred to Directory Standards.

B EXAMPLES OF UNACCEPTABLE AND ACCEPTABLE STATEMENTS

NOTE: The following examples are illustrative and do not constitute a complete list. Any copy not on the list should be scrutinized carefully to be sure it meets the intent of our policy.

UNACCEPTABLE	ACCEPTABLE
* ELECTRONIC	ELECTRONIC BURGLAR ALARMS
* ELECTRONIC (EQUIP.) (DEVICES)	ELECTRONIC FIRE ALARMS
* ELECTRIC	ELECTRONIC SECURITY EQUIP.
* ELECTRO-MAGNETIC DEVICES	FOR PREVENTION OF SHOPLIFTING
* ELECTRONIC SENSING EQUIP.	
* ELECTRONIC SECURITY	

(Cont'd next page)

B EXAMPLES OF UNACCEPTABLE AND ACCEPTABLE STATEMENTS (cont'd)

NOTE: The same principles apply to words such as, "MODERN", "UP-TO-DATE", "LATEST", "SCIENTIFIC", "TECHNICAL" as apply to the examples shown for "ELECTRONIC".

UNACCEPTABLE	ACCEPTABLE
BUGGING, BUGGING DEVICES, BUGS	
BUGS DETECTED	
CONVERSATIONS REPRODUCED (RECORDED)	
COUNTER MEASURES (ESPIONAGE)	UNDERCOVER WORK
EAVESDROPPING DEVICES (SERVICE)	
EAVESDROPPING DEVICES DETECTED	
INTRUSION DEVICES DETECTED	
LISTENING DEVICES (SERVICE)	
RECORDERS, RECORDINGS	PHOTOGRAPHS
SECRET EQUIP. (AIDS) (SERVICE)	
SECURITY EQUIPMENT	SECURITY PATROLS, LIE DETECTION TESTS
SURVEILLANCE EQUIP.	SURVEILLANCE, COMPLETE CRIME LABORATORY, CLOSED CIRCUIT TV, SHADOWING, STAKE OUTS, TAILING, TRAILING
TAPE RECORDERS (RECORDINGS)	EVIDENCE FOR COURT
TRANSMITTING DEVICES (TRANSMITTERS)	
TRANSMITTING DEVICES DETECTED	
*VOICE PRIVACY	

II No mention may be made of divorce work nor may the word family appear in copy. The following may be used:

Personal Investigations	Domestic Troubles
Domestic Investigations	Matrimonial Matters

III Advertising may not state or imply that the services of the advertiser are offered on a contingent or percentage basis or that the advertiser's fee is dependent in any way on the result achieved, e.g.,

UNACCEPTABLE	ACCEPTABLE
No Charge If We Fail	Free Consultation
Ask About Our Conditional Guarantee (or any reference to guarantee or warranty)	
Fee Depends Upon Results	
Lower Rate If Not Fully Satisfied	
Rates Contingent Upon Success	

Names containing words or statements not acceptable as text are limited to SRL or RL (without EL).

(cont'd next page)

(T) IV References, stated or implied, to the availability of an attorney are not permitted, e.g.,

UNACCEPTABLE
Directed by An Attorney
Attorney on Staff
Counselor at Law Available

JUDGE CANNELLA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 CIV. 770

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiffs,

-against-

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION.

Defendants.

DOCKET NUMBER

ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

This cause came on to be heard upon the motion of BRASHICH, FINLEY AND POSTEL, attorneys for the plaintiff by DEYAN RANKO BRASHICH, ESQUIRE, for a preliminary injunction against the Defendants, and a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure, on the filed complaint and on the affidavit of JONAH TRIEBWASSER duly verified the 13th day of February, 1976, and all of the prior pleadings and proceedings heretofore had herein, and it further appearing to the satisfaction of this Court that the defendants and their agents, servants and/or employees are proceeding to publish certain books known as "The Yellow Pages" for the metropolitan New York area and it appearing that the acts of the defendants and their agents, servants and/or employees will irreparably injure and sorely prejudice and harm plaintiff, and upon due and

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YORK, N. Y. 10022
(212) PLAZA 5-1500

oral telephonic notice to the defendants NEW YORK TELEPHONE, at telephone number 395-2121; REUBEN H. DONNELLEY CORPORATION, at telephone number 972-8500; and AMERICAN TELEPHONE & TELEGRAPH COMPANY, at telephone number 393-9800 on February , 1976 at o'clock in the forenoon of that day, it is

ORDERED, that the defendants and/or their attorneys show cause before this Court at the United States Courthouse, Foley Square, New York, New York in Room 100 on the 23rd day of February, 1976 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard why an order should not be made and fashioned enjoining the said defendants, their agents, servants and/or employees pursuant to Rule 65 of the Federal Rules of Civil Procedure from in any way proceeding with or effecting the publishing of any and all of the Yellow Pages for the metropolitan New York area, pending the hearing, trial and judgment of this Court in the within action, and for such other and further relief as to this Court may seem just and proper in the premises; and it is

FURTHER ORDERED, that the defendants, their agents, servants and/or employees be and the same are hereby temporarily restrained from in any way proceeding with or effecting the publishing of any and all of the Yellow Pages for the metropolitan New York area pending the hearing of the within motion; and it is

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FURTHER ORDERED that plaintiff post security in the sum of $10,000, and it is by 12:00 noon on February 18, 1976,

FURTHER ORDERED, that personal service of a copy of this order together with the papers hereto attached on the defendants. NEW YORK TELEPHONE COMPANY, at 1095 Avenue of the Americas, New York, New York; REUBEN H. DONNELLEY CORPORATION, at 825 Third Avenue, New York, New York; and AMERICAN TELEPHONE & TELEGRAPH COMPANY, at 195 Broadway, New York, New York, on or before the 18th day of February, 1976 by 5:00 pm. of that day, be deemed good and sufficient service hereof.

DATED: New York, New York
February ~~18~~ 17, 1976

ISSUED AT

UNITED STATES DISTRICT JUDGE

ASPICH, FINLEY
and POSTEL
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YORK, N. Y. 10022
(212) PLAZA 5-1500

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiffs,

-against-

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION,

Defendants.

- -X

DOCKET NUMBER

AFFIDAVIT IN SUPPORT OF RULE 65 MOTION FOR A TEMPORARY RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JONAH TRIEBWASSER, being first duly sworn, deposes and says:

I am a partner in the firm of TRIEBWASSER & KATZ, a partnership existing pursuant to and by virtue of the laws of the State of New York. The partnership maintains its principal place of business at Two West 45th Street, New York, New York, within the territorial jurisdiction of this Court.

The partnership consists of your deponent and WILLIAM KATZ and is a duly licensed private investigation firm which is controlled, regulated and licensed by the Department of State of the State of New York. It has all of the powers, privileges,

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and obligations allowed it under New York law, as well as all of the restrictions imposed by the applicable provisions of the New York State statute relative to private investigators.

This affidavit is being made in support of the plaintiff's instant application for a temporary restraining order, a preliminary injunction and other assorted relief. All of the facts recited in the instant affidavit are from your deponent's personal knowledge.

The basic issues relating to this controversy are as follows: Through education, and my prior experience with certain agencies of the criminal justice system of the State of New York, I have obtained training and education in the field of electronic surveillance. Since I am no longer associated with any agency of the criminal justice system, and since I am presently employed in my capacity of a licensed private investigator, I desire to place in use my earlier experience. I desire to advertise and to make available to the general public, for appropriate compensation, of course, my experience in checking and otherwise ascertaining whether or not any premises are being electronically surveilled. In common parlance and in the vernacular, this is known as "debugging".

I wish to first specifically advise this Court that such endeavors, debugging, are totally legal endeavors for a

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212) PLAZA 5-1500

private investigator. Of course, the contrary thereof, "bugging" or other illegal electronic listening devices and surveillance equipment is highly illegal. In point of fact, in order to obtain a private investigator's license certain statements under oath have to be made to the Department of State as is set forth in EXHIBIT "1" attached hereto, a copy of the application for a private investigator's license to the Department of State.

Subsequent to our entering into the business of private investigators, we caused an advertisement to be prepared and sought to have the same inserted in various yellow pages of the New York Telephone Company. A copy of the proposed advertisement is attached hereto as EXHIBIT "2". It is clear that the proposed advertisement was one which would provide individuals services which were fully within the bounds of law and not illegal. It is clear that this form of advertisement, and the actual words used therein, is acceptable to other telephone companies. Attached hereto and made part hereof collectively as EXHIBIT "3" are photocopies of the Ann Arbor, Northern Virginia and Maryland suburban telephone books which allow and have in fact accepted advertisements from subscribers which specifically offer debugging and the seeking out of unwanted and illegal electronic listening devices from telephones and premises.

We have, as stated above, prepared a proposed advertisement and thereafter sought to insert the same in the appropriate

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yellow page volumes of the defendant NEW YORK TELEPHONE COMPANY for the New York metropolitan area. The defendant NEW YORK TELEPHONE COMPANY uses as its sole and exclusive agent for the sale of its yellow page advertising the defendant REUBEN H. DONNELLEY CORPORATION. Said defendant REUBEN H. DONNELLEY CORPORATION has a standard contract the pertinent provision thereof, relative to refusal of advertising, is as follows:

> "The Company reserves the right to restrict or refuse advertising for such periods of time as the Company in its sole discretion may determine where (a) in the sole judgment of the Company the units of advertising ordered by the Applicant contain willfully false statements, willfully serve to mislead directory users as to the Applicant's method or place of operation or violate city, state or federal regulations or rulings or (b) the Company had directory complaints from directory users and/or city, state or federal regulatory agencies which in the sole judgment of the Company indicate the Applicant is engaging in unethical business practices."

Now the plaintiff has never had any complaints as against it and has never made any willful false statements or has never violated city, state or federal regulations or rulings. Notwithstanding this state of facts, the proposed advertisement was rejected by the defendant NEW YORK TELEPHONE COMPANY and by the defendant REUBEN H. DONNELLEY CORPORATION.

The defendant, NEW YORK TELEPHONE COMPANY, has internal regulations pertaining to directory advertising of wiretapping and eavesdropping devices and services. Attached

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hereto and made part hereof is a true copy of the latest rules and regulations, which we submit are arbitrary and capricious and preclude us from advertising totally legitimate services.

It is apparently the position of the defendants, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION, that asserting that one may prevent crime, ipso facto means that one can also commit a crime.

We submit that were the yellow pages and the defendants totally private enterprises, they could easily refuse any and all advertisement as they see fit.

However, the defendants are acting under color of state law inasmuch as they are a monopoly controlled and existing which by virtue of state law. No competition may be had and the Public Service Commission of the State of New York is the governmental agency which grants the defendant its licenses and sets its rates. As an aside, the Public Service Commission does not exercise any powers over the defendants relative to the publication of the yellow pages or the solicitation for advertisements contained therein, except that it mandates that any individual who has a business listing may request an upon such request the telephone company must insert that listing in the yellow pages.

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We respectfully submit that the defendants are not simple private enterprises such as newspapers. In point of fact, the NEW YORK TELEPHONE COMPANY, REUBEN H. DONNELLEY CORPORATION and the AMERICAN TELEPHONE & TELEGRAPH COMPANY are more like a broadcasting entity which exists solely by virtue of either state or federal licensing power. In effect, the public has entrusted telecommunication and its appurtenances such as the yellow pages to the state government, which has in turn entrusted the medium of telecommunications and its appurtenances such as the yellow pages, on behalf of the public, to a specific state regulated monopoly. Without state government assignment of this license, there would be a multitude of competing entities and thus state regulations have allocated a scarce physical resource to an entity which is protected by the state.

This in fact is thus then state action and cognizable under the Civil Rights Act of 1871.

It is thus clear that the defendants, acting under color of state law, custom or usage are denying plaintiff the exercise of free speech under the First Amendment to the Constitution, and that such acts of the defendants be in fact repugnant thereto.

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It is further submitted that the defendants' acts are of such a nature as to be termed arbitrary and capricious. In the present instance, defendants' acts are totally contrary to the promulgated rules and regulations of its agent, the defendant REUBEN H. DONNELLEY CORPORATION. It is further submitted that the internal rules of the defendant NEW YORK TELEPHONE COMPANY are in fact arbitrary and capricious and deprive the plaintiff of his rights of free expression and speech.

Finally, it is to be noted, that allegedly and supposedly the defendant NEW YORK TELEPHONE COMPANY, performs the very same services that the plaintiff seeks to provide to the general public. Refusing to allow the plaintiff to advertise its services, it is submitted, is unfair competition and a restraint of trade.

It is clear that the temporary restraining order and the preliminary injunction will in no way act as against the interests of the NEW YORK TELEPHONE COMPANY or REUBEN H. DONNELLEY CORPORATION. At best the motion for a preliminary injunction will be heard within a period of ten days and that no harm will befall the defendants.

However, the fact that the plaintiff will be unable to be included in the new listings of the defendants will have tremendous financial repercussions, and the gains which the plaintiff could have had, and income derived therefrom, would be

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in effect lost.

This is the first application for the relief sought herein and no other application has been made either to this Court or to any other Court of competent jurisdiction.

WHEREFORE, your deponent respectfully prays that an appropriate order be made and fashioned granting the relief of a temporary restraining order, and a preliminary injunction in due course, and for such other and further relief as to this Court may seem just and proper in the circumstances.

JONAH TRIEBWASSER

Sworn to and subscribed
before me this day
of February, 1976.

NOTARY PUBLIC

DEYAN RADKO DRASHICH
Notary Public, State of New York
No. 31-5405850
Qualified in New York County
Commission Expires March 30, 1976

SHICH, FINLEY
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YORK, N. Y. 1002
21 PLAZA 5-1500

SUPPLEMENTARY DATA PRIVATE INVESTIGATOR AND WATCH GUARD AGENCIES

Form R 115 760A (7/71)

(This form is to be attached to and made part of Application for a license as Private Investigator or Watch Guard.)

1. Have you ever engaged in any kind or type of tapping of telephones or telephone wires?_____. If so, describe your activity or activities in full, giving dates, places, the number of the telephone tapped, and the names of the persons for whom such tapping of wires was done. _____

2. Have any of your employees ever done any telephone wire tapping on your behalf?_____. If so, give the name or names and addresses of such employees, the dates, places, the number of the telephone tapped, and the name of the persons for whom such tapping of wires was done. _____

3. Have you ever had any person or persons, other than your employees, do any telephone wire tapping for you?_____. If so, give name and address of such person or persons and also the dates, places, number of the telephone tapped, and the names of the persons for whom such tapping of wires was done._____

4. Have you ever installed any (a) microphones?_____; (b) room recorders?_____; (c) tape machines and/or recorders?_____; (d) electronic devices or mechanisms?_____; (e) or any other listening or recording device?_____. If yes, state for whom, when, where._____

5. Has anyone ever made the installations mentioned in question "4" on your behalf or at your direction or under your supervison?_____. If yes, give name and address of such person and when and where done._____

APPLICANT — PLEASE SIGN THIS AFFIRMATION:

I subscribe and affirm, under the penalties of perjury, that the statements made in this application (including statements made in any accompanying papers) have been examined by me and to the best of my knowledge and belief are true and correct.

Date _____ Signed _____

BEST COPY AVAILABLE

we can detect and
remove unwanted
and illegal
electronic listening
devices from your
telephones,
home or office

CALL
INVESTIGATORS
CIVIL · CRIMINAL · LITIGATION
PROFESSIONAL CONFIDENTIAL

TRIEBWASSER AND KATZ
2 WEST 45 STREET
NEW YORK, NY 10036

AREA CODE 212
986-7330

Mich

38A

Ann Arbor-Ypsilanti Area

Includes separate alphabetical lists & combined Yellow Pages

Ann Arbor • Chelsea • Dexter • Manchester
Milan • Whitmore Lake • Willis • Ypsilanti

Also includes separate alphabetical lists for:
Saline • South Lyon

Michigan Bell

Telephone Directory
Area Code 313
1975-76 (Issued December 1975)

...d

...Ann Arb 761-4145
...e Of Ann Arbor
...rb 769-4507
...ERVICE
...nArb 994-6166

...ain AnArb.....668-6510

Telephone Dictation
...scribing Medical Documents
...Perkins Ann Arb..... 761-1115

...Office Service
...Mimeographing—
...ping-Property Management
...3 E Main Yps 483-1661
PROCESSING SERVICE
...ssional Dissertations &
...is Work Done
...1 Church AnArb.....769-4507
(See Advertisement Page 375)

...ly Control Equipment & Systems

...TERMEASURE SECURITY
...STEMS
...GGING
...VICE
...ND
...IPMENT

NATION WIDE SERVICE
CALL ANYTIME
...OR INFORMATION CALL
...NTERMEASURE SECURITY
...YSTEMS
...0 S Thayer AnArb.....994-4264

...& Bulbs

...y Seed Co
...15 Jackson Rd AnArb....662-6542
...r's Garden Gate Inc
...010 Carpenter Rd AnArb...971-2370

...ANTI FARM BUREAU ASSN—YPSILANTI
FARM BUREAU
56 YEARS OF SERVICE
FARM AND GARDEN
SEEDS & BULBS
Pest Control Products
Farm & Garden Equipment
...Forest Yps.....HU 3-0592

...Citizens' Service Organizations

...Senior Citizens Nutrition Program
...27 Miller AnArb.....663-6560

...Tanks

...rtisers at this heading may be ...red by law to be licensed. (See ...A)

...URRELL & SONS
...106 E Michigan Av Yps...HU 2-3394
...NCE CONCRETE PRODUCTS CO—
MANUFACTURERS
...EPTIC TANKS
...RY WELLS
...OLDING TANKS
...UMP CHAMBERS
...UTOMATIC SIPHON UNITS
RESIDENTIAL AND
...OMMERCIAL SIZES
DESIGN ASSISTANCE
STATEWIDE DELIVERY
887-4173
...N Milford Rd Highland

(Continued on next column)

...people look
Yellow Pages

Septic Tanks—Cont'd

BENTLEY SANITATION SERVICE—
SEPTIC TANK CLEANING
- Cisterns • Cesspools
- Drain Fields Installed
- Trenching • Sump Pumps
- Flooded Basements
- Tanks & Systems Installed & Repaired

24 Hour Emergency Service
449-2900
Or Call Brighton 227-6093
Licensed According To Law
7054 Sheldon Rd
Whitmore Lake

Bentley Sanitation Service
7054 Sheldon Rd Whit Lk..449-2900
(See Advertisement Preceding Page)
Best-Way Electric Sewer Cleaning
32 E Cross Yps.....HU 3-0042
BOGEDAIN BROS TRUCKING & EXCAVATING
11290 Hoffman Maybee....439-1431
(See Advertisement This Page)
BRUCE'S SALEM CONTRACT ENTERPRISES
42990 Grand River Novi...349-5220

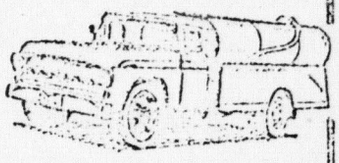
(Continued on next page)

Who'd buy *half* an umbrella?
Only *complete coverage* will give protection against rain.
And so it is with these Yellow Pages.
Complete coverage under *all* headings which relate to your business—will give protection against loss of business.

WELCH SANITATION SERVICE

RUSSELL E. SCHROEN - OWNER

SEPTIC TANKS CLEANED and REPAIRED



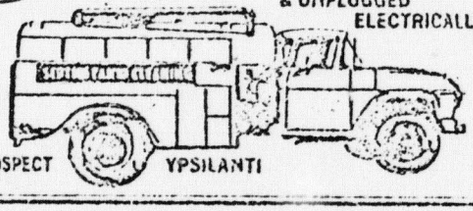
24 HOUR Service
RADIO DISPATCHED

FULLY INSURED
DRAIN FIELDS CHECKED & MINOR REPAIRS • CISTERNS PUMPED AND CLEANED
ELECTRIC SEWER CLEANING . . .
MEMBER MICHIGAN SEPTIC TANK ASSOCIATION
LICENSED BY THE STATE OF MICHIGAN FOR SEPTIC SERVICING
LIC # 73099
NO DOOR TO DOOR SOLICITATION
RECREATIONAL VEHICLE SANITATION DUMPING STATION

663-2520

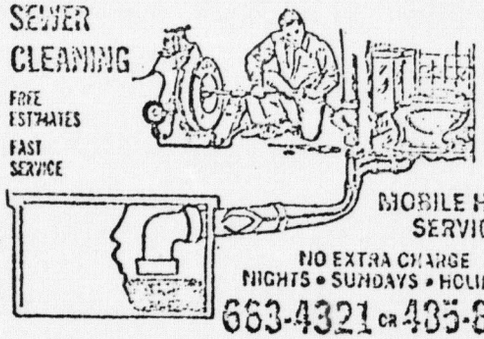
301 N. ZEEB ROAD, ANN ARBOR

SEPTIC TANKS CLEANED
24 hr SERVICE
SINKS • FLOOR DRAINS • TOILETS CLEANED & UNPLUGGED ELECTRICALLY



19 S. PROSPECT YPSILANTI

SEWER CLEANING
FREE ESTIMATES
FAST SERVICE



MOBILE HOME SERVICE
NO EXTRA CHARGE
NIGHTS • SUNDAYS • HOLIDAYS
663-4321 or 485-8140
JOHN'S SEPTIC TANK SERVICE

A CONSUMER SHOPPING TIP

When planning an addition to your house, make sure you hire a reputable contractor whose local references you can check. Explain carefully what you want done and have him give you an estimate. When a lot of money's involved, it's best to get several estimates. Then have a lawyer draw up a contract specifying materials, start and finishing dates, etc. Make sure both you and your contractor agree on terms, and keep your copy of the contract. *Source: Better Business Bureau*

BETTER BUSINESS BUREAU BBB

YELLOW PAGES CONSUMER AIDS

13

SEPTIC TANK
- INSTALLATION
- DRAIN FIELDS
- EXCAVATING
- BASEMENT DIGGING
- BULLDOZING
- BLACK DIRT
- LIMESTONE

439-1491
439-8433

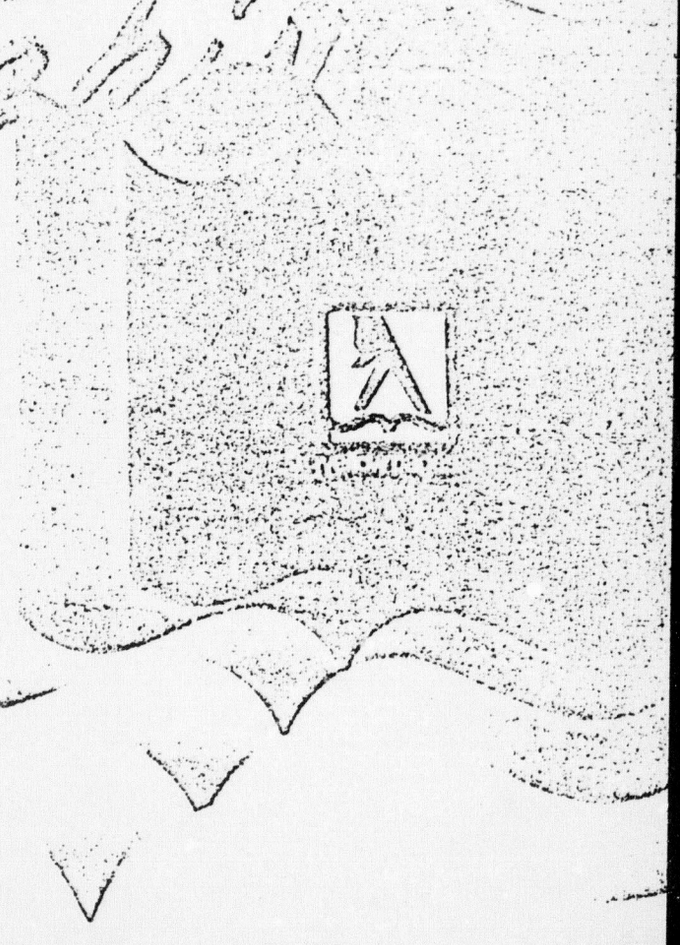
BOGEDAIN BROS
TRUCKING & EXCAVATING
11290 HOFFMAN NEAR YENSCH MAYBEE

C&P Telephone

Northern Virginia

Area Code 703

January 1975



Security Control Equipment & Systems

ALARM MASTERS SECURITY SYSTEMS
7833 Eastern Av Silver Spring MD 588-6151
(See Advertisement This Page)

ALARM MONITORING INCORPORATED

UNCONDITIONAL
24 HOUR ALARM MONITORING
For
COMMERCIAL
RESIDENTIAL
ALARM COMPANIES
Serving Washington Metro Area
588-6158
7833 Eastern Av Sil Spg Md

American Audio Alarms 32 NY Ave NE ---- 636-5063
American Science & Engineering Inc
6347 Rose St Alex 354-1692
AMES ENGINEERING
Security And Access Control Systems
442 Middlefield Dr Fairfx ---- 968-7314
Anchor Dyne Corporation
2625 Wilson Blvd Arl 527-8777
AUTOMATIC DOOR SPECIALISTS
Security Card Access Controls & Security Card Parking Gates
132 Washington Laurel Md ---- 953-7900
BLAYDES LOCK CO
Wholesale Distributors - Security Control Equipment - Electronic & Mechanical
1815 Rhode Island ---- 832-7100
Calspan Technology Products Inc
2300 Wilson Blvd Arl 521-3933
CARD KEY SYSTEMS—
AUTOMATIC DOOR SPECIALISTS
Complete Electro - Mechanical Security Card Systems
132 Washington Laurel Md ---- 953-7900

Capitol Corp 6621 Arlington Blvd Fllch ---- 533-6550
CRIME CONTROL INC 2727 Duke Alex ---- 370-1424
D A Capitol Inc
Photographic Surveillance Systems
Products - Service
9608 Groton Rd Spg ---- 321-730-6250

DEKTOR COUNTERINTELLIGENCE & SECURITY INC
- Consultants In Special Security Problems
- Telephone Security Systems
- Counter Measure Surveys And Inspection

Psychological Stress Evaluator PSE-101

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COUNTERINTELLIGENCE & SECURITY, INC.
5503 Port Royal Rd Springfield, Va. | 569-2900

EASTERN ALARM DISTRIBUTORS INC
WHOLESALE-RETAIL
Complete Line Of Alarm Systems & Parts
- Design Controls
- Napco
- Unisec
- Transcience
- Card-Site
- Vicon
- Arrowhead
- Panasonic
- Kodak Cameras

Manufacturing Electronic Specialties
Consulting Service Available By
R. Carroll Hall III
Professional Security Consultant
Serving The Metropolitan Area
Free Delivery
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GENTRONICS INC
EFFICIENT - DEPENDABLE SECURITY AND FIRE ALARM SYSTEMS
6143 Franconia Rd Alex ---- 971-4900

Henderson Leslie D
7620 Little River Tpke Annandale 941-1010
J H Electronics Corp Alex ---- 683-4300
JEFFERSON INDUSTRIES ALARMS
All Types Of Systems - Locks - Alarms - Radios
5217 Wisconsin NW ---- 244-4180
KASTLE SYSTEMS INC
2501 Wilson Blvd Arl 524-7911
Mandak Instrumentation Specialists Inc
3800 Chain Bridge Fairfx 591-7166
METRO DETECTIVE BUREAU INC
8 Oldham Rd Silver Spg 589-565-0060

MILES GLASS COMPANY
Theft Proof Division
CASHIER BOOTHS
TELLER WINDOWS
For Banks, Savings & Loan Assns
Credit Unions & Finance Cos.
Protect Your Personnel And Your Money
STORE FRONT
SECURITY SCREENS
ALUMINUM OR STEEL
Stationary Guards Or Roll Up - Roll Down Screens
CONTRACT WORK INVITED
BURGLAR GUARD GRILLS FOR Residential & Commercial
"WE CAN PROTECT YOU .... CALL"
8714 Piney Branch Rd Sil Spg Md | 439-5111

Rusco Electronic Systems Div Of Rusco Industries
11500 Dupont Cir Ln Reston 620-3003
SCS Inc 307 Maple Av W Vienna ---- 281-2151
S E A C INDUSTRIES
Customized Security Systems Designed For Your Needs Including Such Items As CCTV-Multiplex Alarm Systems - Intercoms-Door Access Controls - Perimeter Controls - Etc.
We Manufacture Our Own Control Consoles
"FOR INFORMATION CALL"
S E A C INDUSTRIES Natl Press Bldg 393-1454

SEABOARD SECURITY SYSTEMS LTD
7300 Hubbard College Park MD 699-1000
SECURITY CORPORATION OF AMERICA
529 14th St NW 783-7186
Security Inc 5567 Dorsey Ln Bethesda ---- 656-6600
Star Nationwide Protective Systems
Oxon Hill Md 567-9140
Stay-Safe Inc
307 John Marshall Dr NE Vienna 281-2617
TEVCO ELECTRONIC SECURITY SYSTEMS INC 4406 Gallows Rd ---- 573-8080
Tractron Corp 8060 Fallsgrove Dr Vienna ---- 938-4771

UNIVERSAL SENTRY SYSTEMS
SECURITY ACCESS SYSTEMS
MONITORING
PARKING CONTROL
FOR GOVT - INDUSTRY - NATIONAL
SALES - SERVICE
11600 Sunset Hills Rd Reston

VIRGINIA SAFE & LOCK SERVICE
Complete Security Systems - Alarms
10899 Lee Hwy Fairfx ---
Watch Guard Of The Potomac
2361 Rosecrest Dr Alex
WEST CLOSED CIRCUIT TV
TV Security & Surveillance - Immediate Police Identification
8115 Preston Rd Spg MD
Zone Lincoln M Inc
7700 Westpark Dr

Seeds & Bulbs

Arcadian Gardens Nurs Co
620 N
Mendelson's Hardware 11005
P&M Landscaping Inc
Hydro Seeding - Contract
8012 Richmond Hwy Alex
Vaughan's Seed Co
17015 Old Frederick Rd

Senior Citizens Service

Alexandria Retired Senior Vol
32
Catholic Charities Of Northern
Counseling & Emergency As
2300
Northern Virginia Family Serv
206 N

Septic Tanks

A & B QUALITY SEPTIC SER
QUAL
Septic Tank
Radio Dispatc
7 DAYS A
LICENSED - BOND
COMMERCIAL -
INDUST
CONTRACT
HOLDING TANKS FU
CATCH BASINS &
4 Tractors & Trailer
Truck Capacity Up T
TEMPORARY HOLDIN
350-1
604 RITCHIE RD

Alts R H Septic Tank Service
Steven Waters
(See Advertisement

Listings of This Classification Security Control Equipment & Systems Are Continued in Next Column

Listings of This C
Septic Ta
Are Conti

Unique Lease Plan With No Installation Charge
— THERE IS NO EXPENSIVE EQUIPMENT FOR YOU TO BUY.
— THERE IS NO CHARGE FOR INSTALLATION.
— THERE IS NEVER A MAINTENANCE, SERVICE OR REPAIR CHARGE.

CRIME PREVENTION AT ALL TIMES

SILENT and LOCAL SYSTEMS

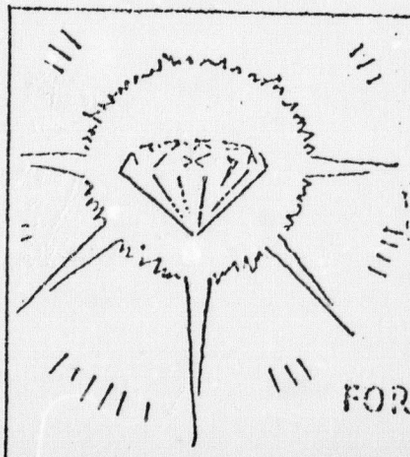
CLOSED CIRCUIT TV

INSTANTANEOUS RESPONSE

588-6151

Commercial - Industrial - Residential

Alarm Masters
SECURITY SYSTEMS
UL APPROVED INSTALLATIONS
"OUR CUSTOMERS WILL RECOMMEND US"
UNCONDITIONAL
24 HOUR EMERGENCY SERVICE
7833 EASTERN AV SILVER SPRING MD

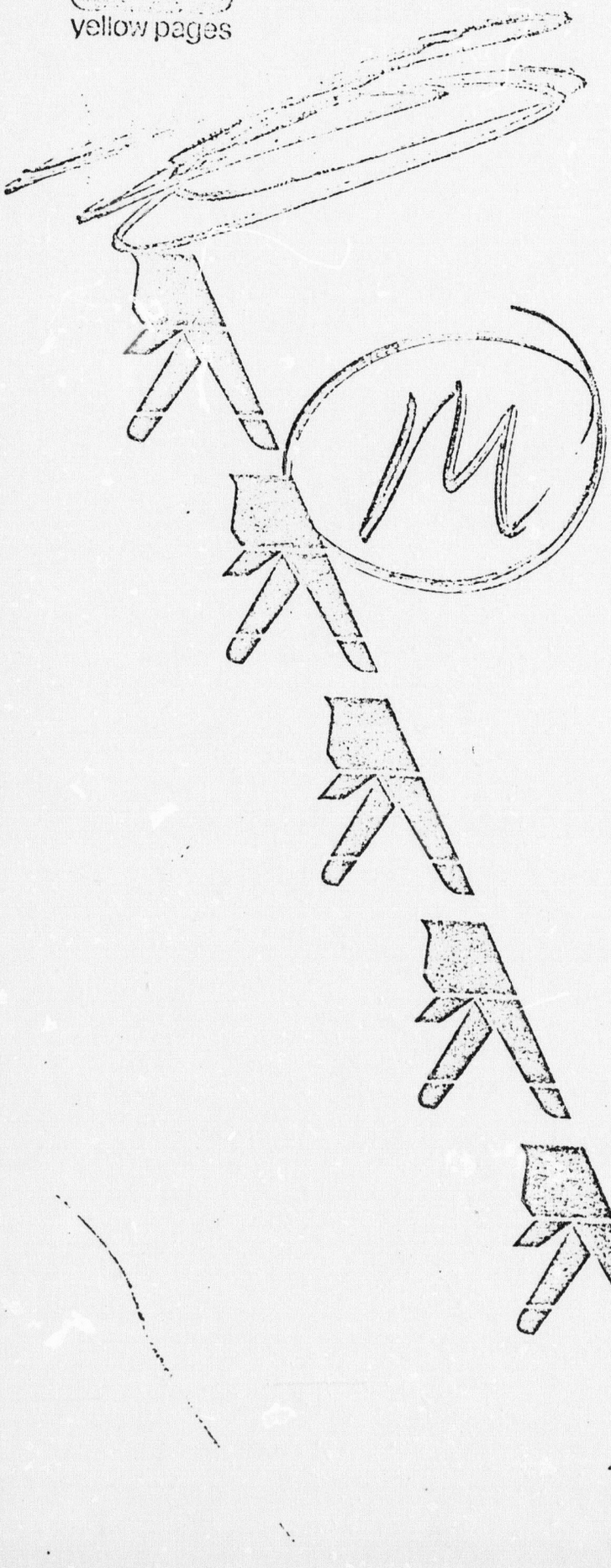


THE
YEL
PAG
ARE A
FOR INFORMA

yellow pages

Maryland Suburban

Area Code 301
October 1975



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BEST COPY AVAILABLE

Secretarial Services

A & M SECRETARIAL SERVICES INC
SILVER SPRING
ALL STENOGRAPHIC SERVICES
IBM Selective Typing
DUPLICATING — NOTARY PUBLIC
LEGAL - MEDICAL - AIA
STENORETTE TAPES
TELEPHONE ANSWERING SERVICE
8121GaAv Sil Spg ---------- 587-3600

ABILITY SECRETARIAL SERVICES
Silver Spring - Langley - Wheaton Area
ACCURATE PROFESSIONAL TYPING
Steno - Documents - Papers - Theses
421 E InSpcSpringDr Sil Spg ------503-7184

ABSOLUTE ANSWERING BY MILLETT
Typing Service - Mailing Address -
Orders Taken
14615Travilah Rd Rockvl ---------- 559-5400

ACCU SEC
Complete
Secretarial Services
- Accounting
- Legal
- Medical
- Transcripts

881-2787

11105TroyRd Rockvl ---------- 881-2787

Accu-Sec 11105TroyRd Rockvl ---------- 881-2787
Adams Secretarial 8634Colesville Sil Spg -587-7537
ADVANCE REPRODUCTIONS
1542ConnAvNW-387-6400
Ashton Secretarial Assistance
13351PatuxentDr Ashton-924-2662
ASSOCIATED BUSINESS CORPORATION
4141PinefieldDr Rockvl 762-1162
AUTOMATED CORRESPONDENCE SYSTEMS
Complete Word Processing Services
1625 K St NW ---------- 638-6767
CAREER TEMPORARIES INTERNATIONAL
"We'll Be There When You Need Us"
1725 I St NW ---------- 296-1560
CLINTON BUSINESS SERVICES INC
Temporaries Available
6305Arnold La Clinton ---------- 868-1400
CONTEMPORARY SERVICES
Typing - Transcription - Duplicating -
Personal Answering Service
7800A1SAv Beth ---------- 656-4880
conTemporary Services 7900WisAv Beth - 656-4889
Cosmopolitan Secretarial Service
1341ConnAvNW 331-1173
EPPS 14711Main UpperMarlboro ------627-5155
Fuchhauser Diane C LuncMarkTwrs AlexVa-751-6770

GA-STENO-TYPING POOL
Cassette Transcription
Telephone Dictation
Etc
1110FidlerLa Sil Spg ---------- 585-6719

H AND M SECRETARIAL SERVICE
Professional Typing and Stenography -
Telephone Answering Service
2311PriceAv Wheaton ---------- 949-6100

MANPOWER INC—
AnnapolisRdg Laurel ---------- 953-7900
3010RockvillePke Rockvl ---------- 340-3243
3000WisAvNW ---------- 363-5592
2000CenturyPlz ColumbiaMd ----- 301 997-0700
154GermanSt AnnapolisMd ----- 301 263-2111
6521ArlBlvd FlsChVa ---------- 536-2115
Medi-Phone Incorporated
12000 OldGeorgtwnRd Rockvl-881-1520

MEDI-PHONE INCORPORATED
MEDICAL TRANSCRIPTION SERVICE
12000 OldGeorgtwnRd Rockvl-----881-1520

MEMORY WORD SYSTEMS INC
AIS Services - Electronic Printing -
Storage
5711SeatonAv Rivdle ---------- 699-9650

METROPOLITAN REPORTING SERVICE INC
Video Taping
Tape Recording
Transcribing
7676 Mt Av Laurel ---------- 490-5400

OFFICE SERVICES INC
Complete Range Of
Secretarial & Temp. Office
Services & Facilities
5454WisAv Beth ---------- 652-0826

PRO-TYPISTS INC
TAPE
RECORDING
Transcription
Reel To Reel & Cassettes
Downtown Pick-Up & Delivery
734 15thStNW ---------- 347-5335

RESUME PLACE THE
Professional Resume Preparation
1731 K StNW ---------- 293-5353
Royal Secretarial Service 7315WisAv Beth 652-5835
Suburban Reporting Service
Tape Recording - Transcribing -
Stenographic Reporting
8165Lasley SilSpg ---------- 565-0711

Security Control Equipment & Systems

A B C Burglar Systems
1001CindyLn Landover SP 3-4151
ASI SECURITY SYSTEMS
3135ConnAvNW 966-0279
ALARM MASTERS SECURITY SYSTEMS
7833EasternAv SilSpg-588-6151
(See Advertisement This Page)
Alarm Systems Division Of Ludtke Laboratories
Ltd Gaithersburg ---------- 297-4878
Alarms Unlimited CampSpringsMd ------449-3355
All Solid State Electronics
Specialization - Commercial - Residential -
Total Systems
8617105thPlPrince Rockvl ---------- 770 0050
AUTOMATIC DOOR SPECIALISTS
Security Card Access Controls & Security
Card Parking Gate
132WestmontLn Laurel ---------- 953-7900
B & B SECURITY LOCK & ALARM CO
1232WisconsinAv Rockvl-881-2700
BLAYDES LOCK CO
Wholesale Distributors - Security Control
Equipment - Electronic & Mechanical
3815Bergen ---------- 832-7100
CALSPAN TECHNOLOGY PRODUCTS INC
Holiday Pk CampSprings-423-4250
CARD-KEY SYSTEMS —
AUTOMATIC DOOR SPECIALISTS
Complete Electro-Mechanical Security
Card Systems
132WestmontLn Laurel ---------- 953-7900

CUSTOM PROTECTION CORPORATION OF ALEXANDRIA
DISTRIBUTORS FOR THE QONAAR 2000 SECURITY SYSTEM
MODERN SOLID STATE CONSTRUCTION OFFERS THE INDIVIDUAL HOME OWNER OR APARTMENT DWELLER "PEACE OF MIND" THROUGH AEROSPACE TECHNOLOGY.
PROTECT YOURSELF FROM . . .
FIRE BURGLARY
INTRUDERS EMERGENCIES.
DECORATOR STYLING
MODULAR CONSTRUCTION FOR EASE OF SERVICE AND INSTALLATION
See Our Display Ads Under
Burglar & Fire Alarm Systems
765-2422
7303ANCILLA CT ALEXVA

DEKTON COUNTERINTELLIGENCE & SECURITY INC
- Countermeasures Sweeps
- Technical Countermeasures Equipment
- Cloak Of c/i

Psychological Stress Evaluator
dektor PSE-101
COUNTERINTELLIGENCE & SECURITY, INC.
5503 Port Royal Rd Springfield Va
569-2900
After December 15, 1975
321-9333

DYNACOM DIV OF DYNALECTRON INTERCOMMUNICATIONS
CONTRACTOR & SERVICE
See Telephone Equip & Systems
890 G S PickettSt AlexVa ------751-3134

Listings of This Classification
Security Control Equipment & Systems
Are Continued In Next Column

Security Control Equipment & Systems (Cont'd)

EASTERN ALARM DISTRIBUTORS INC
WHOLESALE-RETAIL
Complete Line Of
Alarm Systems & Parts
- Design Controls
- Napco
- Unisec
- Transcience
- Gard-Site
- Vicon
- Arrowhead
- Panasonic
- Kodak Cameras

Manufacturing Electronic Specialties
Consulting Service Available By
R. Carroll Hall III
Professional Security Consultant
Serving The Metropolitan Area
Free Delivery
Major Credit Cards Honored
588-6158
7833 Eastern Av Sil Spg

ELECTRONIC SERVICES INTERNATIONAL
Third Party Repair Services -
All Equipment - See Adv. Electronic Equipment & Supplies-Repairing
11961TechRd SilSpg ---------- 622-0732

GEMTRONICS INC
EMERSON - ADEMCO
SECURITY AND FIRE
Alarm Systems
6143FranconiaRd AlexVa --------971-4030

Ident-A-Print Inc 2311PriceAv Wheaton--949-9020
Insta-Code Systems Inc
11700 OldColumbiaPke SilSpg-622-1777
KASTLE SYSTEMS INC
1501WilsonBlvd ArlVa-524-7911

Listings of This Classification
Security Control Equipment & Systems
Are Continued in Next Column

LEFEBURE CORPORATION
MILES GLASS COMPANY
Theft Prod
CASHIER
TELLER V
Pass Thru
For All P
For Banks, Savings
Credit Unions & F
Protect You
And You
PROTECTIVE GU
RESIDENTIAL &
Miles Glass
"WE CAN PROTEC
8714 Piney Branch Rd
Sil Spg Md

ROYCE'S ELECTRONICS
Complete Systems - Sa
Rentals - Residential -
Industrial - Governmen
7503GaAvNW ----------
SEABOARD SECURITY SY
7353StateP
Security Inc 5557Kenseyln H
SENTRY SECURITY
Commercial - Resident
Burglar Alarms - Fire D
Installation - Repair - M
8057CrydenWay Forestvl
STAR NATIONWIDE PROT

TEVCO ELECTRONIC SEC
INC 4306GaAvNW
VIRGINIA SAFE & LOCK S
Complete Security Con
Alarms
10550LeeHwy FairfaxVa
Watkins-Johnson Company CE
700Quince Orchard Rd
WITS CLOSED CIRCUIT T
TV Security & Surveilla
Immediate Police Iden
8115Fenton SilSpg

Unique Lease Plan With No Installatio
— THERE IS NO EXPENSIVE EQUIPMENT FOR YOU TO BUY.
— THERE IS NO CHARGE FOR INSTALLATION.
— THERE IS NEVER A MAINTENANCE, SERVICE OR REPAIR

CRIME PREVENT
AT ALL TIM
SILENT and LOC
SYSTEMS
CLOSED CIRCUIT
INSTANTANEOUS RESP
588-6151
Commercial - Industrial - Residen
AlarmMasters
SECURITY SYSTEMS
UL APPROVED INSTALLATIONS
"OUR CUSTOMERS WILL RECOMMEND
UNCONDITIONAL
24 HOUR EMERGENCY SERV
7833 EASTERN AV SILVER SPRING

me:mg

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -

TRIEBWASSER & KATZ, a partnership consisting of Jonah Triebwasser and William Katz,

Plaintiffs,

v.

AMERICAN TELEPHONE & TELEGRAPH CO., NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORP.,

Defendants.

76 Civ. 770

- -

Before

HON. CHARLES H. TENNEY, District Judge

New York, New York
February 17, 1976
4:15 p.m.

Appearances

BRASHICH FINLEY & POSTEL, Esqs.
Attorneys for Plaintiffs and Moving Party
501 Madison Avenue
New York, New York
By: DEYAN BRASHICH, Esq., of Counsel

GEORGE E. ASHLEY, Esq.,
Attorney for Defendants New York Telephone and Reuben H. Donnelley Corp.
By: PATRICK F. WALSH, Esq., of Counsel

me:mg 1 [2]

MR. BRASHICH: We have given the other defendant, American Telephone & Telegraph Company, telephonic notice at two o'clock this afternoon, your Honor.

MR. WALSH: With your Honor's permission, as I have suggested to counsel for the movant, before coming in, if he is entitled to any relief in this proceeding on the temporary restraining order, Judge, he will be entitled to that as against the two defendants who are represented by me here today.

It is those defendants in whose directories, I understand, he wishes to have certain advertisements published, your Honor.

THE COURT: Donnelley publishes the Yellow Pages?

MR. WALSH: It is an agent for a displaced principal, New York Telephone. It is a sales representative. It is the New York Telephone Company.

THE COURT: When are they going to be printed?

MR. WALSH: Your Honor, the listing is for what I understand to be--and I have not, with respect to the plaintiff's attorney or the movant's attorney, had an opportunity to review all the papers--I believe it is the Queens Directory that is involved in the application.

MR. BRASHICH: That is correct, your Honor, and thereafter, in a short span of time, ad seriatim, other

me:mg [3]

telephone directories will be closed out for the Metropolitan area.

I do not have a time reference or time schedule when the advertisements may no longer be placed with the defendant Donnelley.

MR. WALSH: Your Honor, it is my understanding from a discussion held with my client over the telephone this afternoon, and I have a representative for my client here, that the Queens Directory, the Yellow Pages, your Honor, the listings for that directory were closed as of January 30 of this year, and that they are now in the midst of composition for printing purposes, your Honor.

MR. BRASHICH: While they may have been closed, my clients have had continuing discussions with the same Mr. Bennett who is present in the court until finally it was determined last week that they would not be allowed to have their ad run as it was proposed, so as of last week, the ad could have been inserted and further, I am given to understand that since the actual pages of type have not been locked into place, they still can be inserted today.

MR. WALSH: I have Mr. Bennett here, your Honor, and it is my understanding from my conversations with him that any alteration in the composition schedule at this time would in and of itself independently of the

me:mg [4]

actual publication of it-- this is a very close time proceeding, it is a very demanding procedure to put it together and it is one in which any disruption can indeed prove costly for my clients.

MR. BRASHICH: It would mean a matter of existence for my clients, who have just started a new enterprise.

The defendants, through Mr. Bennett, have allayed their fears and have entered into discussions to see whether or not this particular advertisement would be accepted, and when the due date was past, it was only then that they asserted their right to refuse this advertisement.

To now say that it would be costly to have one page changed slightly when my clients have acted in good faith, I think is unwarranted.

MR. WALSH: Your Honor, we have a situation here where the plaintiff is seeking a temporary restraining order and advises the Court at this time that evidently his client's life's stake is at issue here.

I don't question his belief along those lines, Judge, but there is more than that required, I respectfully submit, to restrain the publication of this directory, which is, as I understand it, the relief that is being sought or to require us to require New York Telephone

me:mg [5]

Company to relinquish its control over its own publication.

An item of its business, your Honor, which as the plaintiff correctly notes in that portion of the papers that I have gotten, is not an element of its business, of New York Telephone Company's business; the publication of ads in the Yellow Pages, your Honor, is not subject to regulation by the Public Service Commission in New York.

Here is a publisher which is publishing a volume and the issue is whether or not that publisher --

THE COURT: Does it through itself or through any of its agents render this debugging? There is some talk that maybe this action in controlling a publication might have some antitrust implications.

MR. BRASHICH: The New York Telephone Company does provide those specific services which would be commonly known as debugging, that is to say, that if you would call New York Telephone Company, they would send an individual over to your office or your home and would check out just the instrument itself to find out whether there is any hard wired bugging device on it.

It does not provide any other services such as room sweeps, as was-- I am looking at the great seal behind your Honor-- as was in the Warsaw Embassy of the

me:mg [6]

United States. It does not provide that other type of service. But it does provide the service of having someone come into your office and check to see whether or not your phone is bugged.

It is compensated through its general overhead charges and rates that it files with the Public Service Commission of the State of New York.

However, through its publication, which is the only media through which an individual could possibly get a competitor, they have closed out this media to the plaintiffs here or to anybody else who would seek to offer their own wares and services to the general public.

MR. WALSH: Your Honor, I am not prepared -- I did not come here today prepared to answer such an antitrust allegation.

THE COURT: I know. I didn't expect you to. All I wanted to say is there is a ghost of an antitrust --

MR. WALSH: With respect to that, I think counsel's own statements of his point is a response to it. To my knowledge, and again I qualify that very seriously, your Honor, to my knowledge that is not a profitable or a promoted item of business of the New York Telephone Company. Again, that's strictly through my own knowledge, your Honor.

me:mg [7]

I would believe, based on my limited experience and exposure to these matters, that such services might be provided incident to the rendition of telephone service which we are rendering, of course, under our tariffs with the Public Service Commission.

THE COURT: How long has this matter been going on between you people?

MR. BRASHICH: Your Honor, I believe it started approximately three and a half to four weeks ago.

THE COURT: When was the complaint filed?

MR. BRASHICH: The complaint was filed this afternoon, your Honor.

The denial to the request to insert the ad came last week, your Honor.

THE COURT: Judge Cannella is away and he will be back on Monday.

MR. BRASHICK: I am sorry, I did not catch that.

THE COURT: Judge Cannella is away, to whom the case is assigned. I am merely sitting as an emergency judge.

My sole concern is whether I should enter a temporary restraining order until Monday.

MR. WALSH: If I may be heard very briefly on

me:mg [8]

that point, your Honor. I have dealt with a number of cases such as this brought across the street, your Honor, in the state court. Most recently, your Honor, if I may, and I will furnish a copy to the attorney for the plaintiff -- if I may furnish the bench with a copy -- most recently, your Honor, in October of this year, I got the decision which is now being given Judge Tenney from Mr. Justice Hellman in the State Supreme Court of New York.

In that case, your Honor, we faced many of the same allegations of irreparable harm and many of the allegations relating to our control of our directories as we do in this case.

We have in the standard order, your Honor, which the applicant for a Yellow Pages ad or Yellow Pages service signs and the very item in question is attached as an exhibit in the complaint, your Honor.

In Paragraph 12 it recites that "the company," meaning the Telephone Company, reserves the right -- and I am skipping a few intermediate paragraphs, your Honor, or intermediate words--"to alter any representation in order to make it conform with the standards and practices governing the printing of telephone directories published by the company."

In this case, your Honor, we do have -- this

me:mg [9]

wasn't something we thought up three weeks ago -- this is a long-standing practice of New York Telephone Company relating to the type of listing that's involved in this case -- having to do essentially with electronic eavesdropping or the prevention or sweeps of electronic eavesdropping.

A copy of that standard,or published standard of New York Telephone Company was, I believe, from a copy of a letter I have here, your Honor, mailed to a principal of the plaintiff on February 10 of 1976.

MR. BRASHICH: I believe it is Exhibit B attached to the complaint, your Honor.

MR. WALSH: In any event, your Honor, may I respectfully point up to the Court that the New York courts have consistently upheld the validity of the limiting terms and provisions or the contract terms and provisions which appear on the reverse side of an application for Yellow Pages listing. It is incorporated directly on the signature page, your Honor, when the applicant for Yellow Pages listing makes his application subject to the terms and conditions printed on the reverse side of the application.

MR. BRASHICH: Your Honor, if I could respond to that -- well -- counsel is basically saying that the

me:mg [10]

state courts have allowed in other decisions the Telephone Company to change its listing or change its advertisement. I have no cavil with that particular position. What I do have is a cavil as to the situation where the Telephone Company, while rendering the very same services to its subscribers, whether they be profitable or not, prevents my clients from advertising their services and their wares.

We are not here trying to advertise something which is illegal. In fact, my client is also licensed by the state and is a licensed private investigator. One of my clients was formerly with Maurice--

THE COURT: I am really not in a position to pass on the merits. I am in a positionto set it down returnable. All I have before me is an application for an order to show cause. Make it returnable on Monday. Judge Cannella will be here. He is going to have to decide the case one way or the other.

Now I take it the problem is with the Yellow Book for Queens --

MR. BRASHICH: That is correct, your Honor, whether the actual pages will be locked in. They are not at this point.

THE COURT: What damage does the Telephone Company or Donnelley or whatever it may be suffer by a four or five-

me:mg [11]

day delay?

MR. BRASHICH: I submit none, your Honor.

THE COURT: What is the type of bond you are prepared to post?

MR. WALSH: Your Honor, may I point out in that connection, that Mr. Bennett, who is here for my client today, provided me with an affidavit in that case, your Honor, the decision in the Martino case, which I handed up to the Court a moment ago.

THE COURT: Well, that's distinguishable.

MR. WALSH: Your Honor, in terms of your bond inquiry, he pointed up in his affidavit at that time, which he is prepared, I believe, to reaffirm today, that the cost to the New York Telephone Company to produce the Yellow Pages directory for the Borough of Queens, New York, amounts to some $3 million, that the revenues --

THE COURT: I am not talking about the cost. I am talking about the four days' delay in distributing or completing it.

MR. BRASHICH: Setting type.

THE COURT: That's all I am talking about.

MR. WALSH: I understand that, your Honor. I give you that figure only as some idea of the general scope of the project. I am only trying to point up to

me:mg [12]

the Court it is not a minor project, the publication of this.

A substantial bond is in order if indeed your Honor will in these circumstances absent, I respectfully submit to Judge Tenney, any showing other than a statement of irreparable harm to a plaintiff who has available to it newspapers, the media, and a great variety of other avenues of advertising that do not come under the control of the New York Telephone Company.

We only seek in this case, your Honor, to control the publication of our own directory and if indeed we are stopped at every step of the way by somebody who does not like the way we require it has to be entered.

THE COURT: If I don't enjoin any further--

MR. BRASHICH: May I suggest a compromise?

THE COURT: Wait a minute. If I don't enter a temporary restraining order, it may cost you more than if I do enter a temporary restraining order. It might be a question of undoing what you have been doing.

I don't know what Judge Cannella would do in the case.

MR. WALSH: Doesn't this impress you as a case where money damages would be an appropriate demand or an appropriate remedy for a plaintiff to seek?

me;mg [13]

MR. BRASHICH: Mr. Walsh, had we an ongoing business with a past history that we could point to, then I would say yes, publish your Yellow Pages, and I will seek my damages in court.

However, as the papers specifically set forth, this is a new and fledgling enterprise with no history as to its past experience and therefore the Court would not allow the issue of damages to go to the jury.

However, I suggest a compromise. You are in the process of locking in the papers. Leave a quarter-page ad or a eighth-of-a-page ad, whatever the size that is necessary for the proposed ad that is attached to the moving papers, and leave that particular page blank with one-quarter of that page blank.

If the Court finds in our favor, fine and good, we will insert our ad in that one page.

If the Court finds against us, we will still insert our ad in that particular page without the reprehensible or horrible words to which you object.

THE COURT: That sounds reasonable to me.

MR. WALSH: I cannot make that commitment on a voluntary basis.

THE COURT: All you are being prohibited by the temporary restraining order is the effecting procedure

me:mg [14]

or effecting the publishing.

It seems to me you can do anything else you want short of actually disseminating this publication. Now, so far as running the risk of maybe having to undo something if Judge Cannella rules in favor of the plaintiff here, possibly what this gentleman suggests is a way that might sort of alleviate the problem.

MR. WALSH: Your Honor, again, I have been here attempting to explain the basis upon which our refusal to publish in the manner requested by plaintiff, why we did what we did. Essentially because -- essentially it is because it is our directory and we have a standard which we believe is a reasonable and proper one to avoid the dissemination of possibly misleading information.

THE COURT: Judge Cannella may thoroughly agree.

MR. WALSH: Your Honor, I only point that up in terms of what I have attempted to show on behalf of my client, your Honor.

THE COURT: I think you have shown it. But it still doesn't -- the thing that troubles me a little here, the fact that to a limited extent, you are infringing on the right of a potential competitor to render a service which has antitrust implications, and I don't know whether Judge Cannella is going to feel that way or whether he is

me:mg [15]

not.

They are only talking about four or five days. I will make it returnable before him on Monday. And I will include a temporary restraining order, but I think that some bond should be posted because there seems to be some damage by the four or five days' delay.

I can't determine what it would be but I will put $10,000 --

MR. BRASHICH: May we have by tomorrow at ten o'clock to file the bond, your Honor?

THE COURT: Yes.

MR. BRASHICH: Thank you, sir.

THE COURT: Now, that will be returnable -- he wants it at 9:30. That will be on the 23rd of February-- returnable, Room 1001, February 23, 1976, at 9:00 a.m.; provided for service of these papers.

MR. BRASHICH: I will serve AT&T and if counsel will accept service on behalf of Telephone and Donnelley -

MR. WALSH: Of the motion papers?

MR. BRASHICH: Of the motion papers and the summons and complaint. I have already asked the marshal to serve.

MR. WALSH: I have no problem with accepting on behalf of Donnelley and New York Telephone the motion

me:mg [16]

papers and the complaint.

THE COURT: Well, make it then before the 18th of February-- by 11:00 a.m. that day.

MR. BRASHICH: I was wondering, your Honor -- I have just posed to opposing counsel whether or not there is a possibility of receiving the reply papers by Friday afternoon at the close of day. Someone else from my office will have to handle this matter on Monday since I am scheduled for a murder trial in Southern Jersey on Monday morning, so in order to be able to prepare any reply papers, and to get one of my partners familiarized with this case, I was wondering whether I could ask the Court for a direction by Friday.

MR. WALSH: Your Honor, I can only represent to counsel and the Court that I will certainly do my best. I have technical people to line up on such things as the competing aspects or the competition aspects of plaintiff's papers and so on.

THE COURT: I appreciate that.

MR. WALSH: I will do the best I can.

THE COURT: I am sure Judge Cannella is not going to decide it unless he has got papers referrable and has had a chance to look at the papers. So it is to everybody's advantage if they want to get a rapid determination of this to bring the papers in.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

76 Civ. 770

Plaintiffs,

- against -

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION,

Defendants.

----------X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

PATRICK F. WALSH, being duly sworn, deposes and says:

1. I am an attorney associated with George E. Ashley, attorney for the defendants and each of them in the within action. I am personally familiar with the matters hereinafter set forth.

2. I make this affidavit and submit the accompanying affidavits of James R. Bennett and William F. McGarty, both sworn to February 20, 1976, in opposition to the plaintiffs' motion for a preliminary injunction which would restrain defendants from proceeding with the publication of forthcoming classified Yellow Pages directories for the New York Metropolitan

area, pending resolution of plaintiffs' various claims.

3. A review of the plaintiff's moving papers and complaint, and of the matters set forth in response thereto in the aforementioned opposing affidavits of James R. Bennett and William F. McGarty, leaves no room for doubt but that the plaintiffs' claims are totally without merit and that the complaint should be dismissed. I respectfully request, at this time, therefore, that at the hearing on the motion for a preliminary injunction, the Court also consider the merits, or lack thereof, of plaintiffs' case and dismiss this action in its entirety.

4. The constitutional, statutory and antitrust claims made by the plaintiffs are shown in the defendants' affidavits and in the accompanying memorandum of law to have no basis in fact or in law. As such, plaintiffs' purported federal claims are not cognizable by this Court. Those remaining claims which plaintiffs premise upon state law and submit to this Court on principles of pendent jurisdiction are premised on the identical groundless factual allegations, and should likewise be dismissed.

5. The matters set forth in the accompanying affidavit of James R. Bennett and in Point I of defendants' memorandum of law insure that there is absolutely no basis for the issuance of a preliminary injunction in this case. Plaintiffs are unable

to meet or satisfy any of the governing criteria for the issuance of such extraordinary relief. Most particularly the indicated sources reflect that on any balancing of hardships criterion, the plaintiffs' motion must fail. In effect, we deal in this case with two individual plaintiffs who seek to restrain, impede and otherwise disrupt the publication of classified telephone directories in a way that would cause many millions of dollars in losses to the defendant publisher and would, more importantly, have extremely adverse affects on the many thousands of advertisers whose perfectly appropriate listings are scheduled for publication in those directories and upon the public at large in the New York Metropolitan area who utilize the Yellow Pages as a source of useful information.

6. Plaintiffs' proposed advertisement, which contains a representation of plaintiffs' capability to detect and remove electronic listening devices from telephones, homes and offices, does not satisfy the publishing defendants' standards for Yellow Pages advertising. It was, accordingly, rejected by the defendant in question for the reasons furnished by that defendant to the plaintiffs, namely, that in keeping with the spirit and requirements of law and with the continuous concern of New York Telephone Company ("Telco") for privacy of communication, advertising text or illustration submitted for publication

in Telco's Yellow Pages directories may not state or imply that wire tapping or eavesdropping services or equipment are available, nor will Telco accept so-called "debugging" advertising, since Telco believes, as to large segments of the public, that those who have the capability to "debug" can also furnish wire tapping and eavesdropping services and equipment.

7. The standards so applied by Telco are neither unreasonable, arbitrary or capricious, as demonstrated in the accompanying affidavits of James R. Bennett and in the defendants' memorandum of law. Telco's concern for privacy of communication and its desire to honor the spirit as well as the letter of state and federal laws restraining electronic and other eavesdropping activities, is an entirely appropriate policy, particularly in this day and age. The plaintiffs' free speach and antitrust attack on that policy, a policy which is uniformly applied by Telco, is shown in defendants' opposing affidavits and memorandum to be entirely without merit.

8. This litigation involves principles of private contract law, and does not involve any "state action" of the defendants. Plaintiffs submitted a signed application for listing in the defendant Telco's Yellow Pages directory. A copy of the

signed application is hereto annexed as Exhibit A. The conditions governing that application, conditions to which plaintiffs also agreed, include Telco's reservation of its right to alter any proposed listing or advertisement in order to insure its propriety under Telco's standards and practices governing the printing of classified telephone directories. There are no constitutional or antitrust issues involved in this case. For all the reasons set forth in the accompanying memorandum of law, the contract issues involved in this case must be decided in favor of the defendants.

9. The consequences to Telco, its Yellow Pages advertisers, and the public, in the event that a preliminary injunction is improvidently granted to plaintiffs, would be enormous in terms of dollars, inconvenience, and potential liability exposure. In the accompanying affidavit of James R. Bennett and in the accompanying memorandum of law, at Point VI, defendants have, by reference to the factual data and to governing law, demonstrated that an appropriate bond upon issuance of such an injunction in this case would be not less than $15 million.

10. The imaginative efforts of the plaintiffs to make, literally, a "federal case" out of a simple contract dispute

should not be rewarded by this Court. The Court should recognize this case for what it is, deny injunctive relief, and dismiss the complaint in its entirety.

WHEREFORE, the within motion of plaintiffs for a preliminary injunction should in all respects be denied and the complaint should be dismissed, and in the event that a preliminary injunction does issue on plaintiffs' motion, an injunction bond of $15 million should be fixed by the Court.

Sworn to before me this

26 day of February, 1976.

Patrick F. Walsh

[illegible], New York
[illegible]
[illegible] County
Term Expires March 30, 19[illegible]

ORDER FOR DIRECTORY REPRESENTATION

THIS UNASSIGNED

WALSH AFFIDAVIT EXHIBIT 6A

BEST COPY AVAILABLE

PFW/cmh 2/19/76

67A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiffs,

- against -

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY, and REUBEN H. DONNELLEY CORPORATION,

Defendants.

----------x

76 Civ. 770
(Judge Cannella)

AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION.

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

JAMES R. BENNETT, being duly sworn, deposes and says:

1. I am employed by defendant NEW YORK TELEPHONE COMPANY ("Telco") as Directory Supervisor-Field Operations. I have been employed by it for some fifteen (15) years, during 12 of which my work has been involved with the publication of Telco's alphabetical and classified telephone directories. I have occupied my present position with Telco for two years. In my capacity, I am personally familiar with the publication by Telco of its classified or "Yellow Pages" directories, with the standards and practices of Telco governing the printing of such classified directories and with the elaborate mechanics and procedures involved in the assembly, preparation and the forwarding of information for such publication.

2. I have personal knowledge of the matters hereinafter set forth except where I have specifically indicated my statement to be made upon information and belief, and in such instances the source of my information and the grounds for my belief are the books and records of Telco and conversations had by me with Telco's employees. I make this affidavit in opposition to the pending Motion of the plaintiffs herein for a temporary restraining order and a preliminary injunction seeking to restrain Telco from proceeding with the publication of its yet unpublished classified directories for the metropolitan New York area and seeking further to require Telco to accept and to publish plaintiffs' proposed advertisement in the form desired by plaintiffs.

The Yellow Pages

3. Defendant Telco is the owner and publisher of certain classified directories. Included among these are classified telephone directories published separately for each of the five New York boroughs, excluding Staten Island, which latter classified directory is bound together with the alphabetical (White Pages) directory for that borough, as well as for the other surburban counties in the metropolitan New York area.

4. It is my understanding, and I am so advised by counsel and verily I believe, that Telco in connection with its publication of classified (Yellow Pages) telephone directories is not engaged in a public utility enterprise and is not regulated in its "Yellow Pages" activities by the Public Service Commission of the State of New York, which in all other respects regulates

every aspect of telephone service. It is further my understanding that in its publication of Yellow Pages directories, Telco is essentially involved in a private enterprise publication activity. The alphabetical or White Pages telephone directories published by Telco are so published as an adjunct to or indeed as part and parcel of telephone service to Telco subscribers, and has as its main purpose the furnishing to Telco subscribers of telephone number service. In this connection it should be noted that Telco does, in its Yellow Pages directories, furnish without charge a listing in the Yellow Pages, under the appropriate heading, for its business subscribers. In large part, however, the classified or Yellow Pages directories are devoted to the publication of paid listings and advertisements.

5. The defendant Reuben H. Donnelley Corporation is authorized by Telco to solicit units of representation in classified telephone directories published by Telco in the metropolitan New York area, but is not authorized to agree to insert or publish the units ordered, or to bind Telco in any manner not expressly provided for in the Order for Directory Representation submitted by the subscriber or advertiser who seeks a paid listing or Ad in the Yellow Pages. Reuben H. Donnelley Corporation, upon information and belief, is widely known in the metropolitan New York area to be a Telco agent for this purpose.

6. Publication of a classified telephone directory is a long, involved, and extremely demanding process. There are very few printing companies in the United States with facilities extensive or adequate enough to print and bind the directories published by Telco. As a result, the enormous job of collecting, collating, composing and printing such telephone directories is done on a very exact, detailed and demanding schedule. Firm dates for the printing of any directory are established two years in advance. The classified telephone directories for each of New York's five boroughs and for the surrounding suburban counties are printed, generally, once a year. These directories are printed by R. R. Donnelley & Sons, Co. (no connection with Reuben H. Donnelley Corporation), a company whose offices are located in Chicago, Illinois, and whose printing facilities for the publication of most of Telco's telephone directories, including those for the metropolitan New York area, is located in Lancaster, Pennslyvania. This company prints approximately one hundred telephone directories during the course of a year, for five separate and distinct telephone companies. The complexities and associated commitments defined by this printer's press schedule require that a particular Yellow Pages or classified directory be published during the time allotted for its printing, or not at all. In other words, if the forthcoming classified directories

for such counties as the Bronx and Queens are not published during the press time now allotted by the printer for their publication, there will be no 1976-77 Yellow Pages for these counties.

7. The following data, giving estimated figures for the forthcoming 1976-77 publication, is respectfully submitted for the purpose of apprising this Court as to the physical and financial scope of classified directory publication.

8. It should be noted with respect to the information which follows that the figures are approximations and that the Manhattan and Staten Island classified directories have already been printed and delivered.

Borough	Copies	Pages	Display Ads	Listings	Cost to Produce
Manhattan	1,354,000	2,060	5,456	258,100	$7,568,000
Brooklyn	1,172,000	976	3,773	110,200	3,189,000
Bronx	614,000	628	2,495	54,400	1,491,000
Queens	1,028,000	1,164	3,737	101,861	3,055,000
St.Island	230,000	446	2,094	21,900	610,000

As is evident from these figures, we deal here with a massive project which I have very conservatively estimated to cost approximately $16,000,000.00. Actual and anticipated revenues to New York Telephone Company from the sale of advertising in the indicated directories would, of course, substantially exceed the costs of publication. Classified directories do generate

revenues, which are reported to the governing regulatory authorities and which serve to offset the overall costs of providing telephone service to the vast number of Telco subscribers in the State of New York.

9. The foregoing data for just the five boroughs of New York, which does not include an additional quarter million listings for the suburban counties north of the City and in Long Island, provides a clear indication of the number of business subscribers who, we reasonably expect, are counting upon having their listing published in forthcoming classified directories. I respectfully urge the Court's attention to these numbers for purposes of its comparison with the claimed rights and allegations of prejudice advanced in this action by two individual plaintiffs. Untold thousands of classified directory users would also be unquestionably damaged by the Court's enjoining publication of forthcoming classified directories. Finally, and not without significance, is the tremendous harm which Telco would suffer in the event that a preliminary injunction is issued as requested by plaintiffs. Telco would face the loss of potentially thousands of classified directory customers who might, during the one year period of unavailability of a classified directory for their respective areas, transfer their advertising dollars to other classified directories or to other advertising media.

This loss of revenues by Telco would unquestionably be reflected in future rate filings made by the New York Telephone Company with the Public Service Commission of the State of New York. Failure or inability to publish the directories might also expose Telco to many millions of dollars statutory credits which might become payable to the classified directory subscribers in the event of non-publication.

10. I have set forth above some of the details involved in the demanding printing schedule which governs publication of Yellow Pages directories by Telco. Because of the rigidity of the printing schedule there is a correspondingly rigid and demanding schedule for assembly, collation and composition of the advertisement listings prior, indeed long prior, to the actual printing date. Interference with or obstruction of that pre-printing process schedule obviously creates a serious risk that the printing deadline might not be met or, perhaps worse, that a poorly composed work product might result. It is for these obvious reasons that closing dates for the acceptance of listings are established and that additional pre-printing deadlines are also required. The period immediately preceding and following the closing date for acceptance of directory advertising is the busiest time of the year for directory personnel, who are faced with the massive task of collation and composition as aforesaid and faced as well with the problem of insuring that all

proposed advertisements are in compliance with the various applicable directory standards. In summary, it can not be remotely suggested that Telco has a great deal of flexibility in terms of time throughout the period leading up to the printing deadlines.

11. R. R. Donnelley & Sons Company is one of the few printers large enough, as stated above, to print Telco's directories, and for various mechanical reasons it would be practically impossible to transfer the printing of these directories to another printer. Telco's Yellow Pages are compiled by means of a cold-composition process. A film negative is furnished to the printer from which curved printing plates are produced. The printing process must be compatible to the type of film negative produced by Telco's photo-composition equipment.

12. As set forth above, the 1976 classified directories for Manhattan and Staten Island have already been printed. Delivery of the Manhattan Yellow Pages was begun on January 26, 1976, and this directory was obviously printed prior to that date. Printing and delivery of the Staten Island classified directory was completed even earlier. The Telco's classified directory for the Bronx, which will contain almost 55,000 listings, is scheduled for printing during the period March 1, 1976 through March 9, 1976. That schedule is not subject to change. The

printing deadlines for the remaining metropolitan area counties will follow shortly on those fixed for the Bronx. The temporary restraining order entered by Judge Tenney on February 17, 1976, will, unless dissolved and vacated at this time, pose a very real hazard to the meeting of these deadlines. A much more serious hazard, of enormous dimensions, would be created by this Court's granting the requested preliminary injunction.

Directory Standards & Practices

13. In its Order for Directory Representation, Telco specifically reserves the right to alter any representation in any proposed listing "in order to make it conform with the standards and practices governing the printing of telephone directories published by the Company". (A copy of both the Terms and Conditions of the Order for Directory Representation, and, a copy of the Standards & Practices which have been applied in this case are annexed to the plaintiffs' complaint as Exhibits B and C, respectively.

14. Under its aforementioned standards and practices, Telco will not accept a proposed advertisement which in its judgment either states or implies that wiretapping or eavesdropping services are performed by the advertiser or that the advertiser has available equipment or devices for such purposes. This

policy, as the indicated exhibits set forth, has always been interpreted by Telco to include a prohibition against the advertisement of so-called "debugging" services. Telco is reasonably satisfied that the public to whom classified directories are disseminated believes that those who advertise debugging services also possess the capability to engage in unlawful bugging or eavesdropping activities. Telco has traditionally been extremely sensitive to the privacy of private communications and has adopted this policy, which is apparently viewed as excessively cautious or conservative by plaintiffs, to insure to the extent possible that privacy is respected and that the public is not misled, confused, or otherwise caused problems or difficulties with respect to advertising appearing in Telco publications. In publishing a classified directory, Telco is necessarily considered by large segments of the public to be a party to the representations contained in the directory and to any practices carried on by the advertisers whose listings appear therein.

15. The plaintiffs proclaim that they have not and will not engage in any unlawful eavesdropping activities, and this may well be the case. However, Telco is not in a position to police the activities of its classified directory subscribers after publication of a classified directory. It must make such

judgments and decisions in advance of publication. In Telco's judgment, one who possesses the ability and expertise to detect and eliminate electronic or other eavesdropping devices may reasonably be expected to possess the capability and expertise to engage in unlawful eavesdropping activities. It is not unreasonable for Telco to believe that one engaged in legal "debugging" activities either possesses or will come to possess the knowledge and the capability to install as well as detect and remove unlawful eavesdropping devices. More importantly, and as set forth in its Standards and Practices, Telco is reasonably convinced that the public believes that those who can "debug" can also "bug".

16. The Ad proposed by plaintiffs for insertion in the Queens classified directory for 1976, a copy of which Ad is annexed as Exhibit A to plaintiffs' moving papers, runs clearly afoul of Telco's standard governing such Ads. The statement in the proposed Ad that:

> "We can detect and remove unwanted and illegal electronic listening devices from your telephones, home or office"

amounts, as plaintiffs acknowledge, to their offering "debugging" services to the public at large. As such, the Ad is totally unacceptable. The policy pursuant to which the Ad was rejected

was not formulated at the time of plaintiffs' application, but rather has been the policy of Telco and, upon information and belief, the entire Bell System for many, many years. The prohibition is applied by Telco and has been so applied not only against plaintiffs herein but against all private investigators, security consultants, or other related advertisers who have sought to include reference in words or substance to "bugging" or "debugging" services in their Ads. There was no discrimination against the plaintiffs herein in Telco's refusal to publish their Ad. All such proposed advertising, by whomever submitted, is unacceptable to Telco.

17. The Telco Standards and Practices of which the plaintiffs complain are no doubt cautious and conservative. Given Telco's aforesaid long-standing committment to privacy in communications, Telco would much prefer to err, if at all, on the side of caution rather than liberality or carelessness in this area. Certainly, in this day and age a zealous committment to privacy in communications can not be considered arbitrary or unreasonable.

Alternative Publications and Media

18. Telco has properly refused to publish the Ad proposed by plaintiffs. The suggestion by plaintiffs that this refusal

will effectively destroy their fledgling business enterprise, while it has flattering implications for the impact of Telco's classified directories, would appear to have no basis in fact. In the area of classified telephone directories, Telco is far from being the "only game in town". Annexed hereto as Exhibit A is a copy of the cover sheet on the 1975-76 "GREEN BOOK", a directory published by Larry Bard Associates, Inc., located in the borough of Queens. The directory cover which is Exhibit A to this affidavit is a directory for the Jackson Heights and Elmhurst areas in the County of Queens. I have determined from personal investigation that the publisher of this "Green Book" publishes approximately 13 such directories for different localities within the borough of Queens,and tha.. in total, some 500,000 copies of such directories are published on a regular basis. I know of my own personal knowledge that similar classified telephone directories are published by companies other than Telco in most counties in the metropolitan New York area. In addition, and aside from the availability of newspaper and broadcasting media, I cannot but believe that there are numerous or at least some trade publications, both regional and national, in the security or investigation industry wherein plaintiffs might seek to advertise their services. In summary, I am unable to accept as credible the assertion of plaintiffs that unless their Ad is accepted in the manner proposed by them, there will result

"tremendous financial repercussions and the gains which the plaintiffs could have had, and income derived therefrom, would be in effect lost." There are no doubt tremendous financial and social repercussions involved in the plaintiffs' action to enjoin Telco's publication of Telco's classified directories, in the manner and pursuant to the standards proposed by Telco, but these repercussions will befall not the plaintiffs, but rather Telco, its classifed directory advertisers, and the public at large.

Alleged Restraint of Trade

19. I have been employed by New York Telephone Company for 15 years. I am reasonably familiar with most, if not all, aspects of Telco's business. Contrary to the suggestion of the plaintiffs, New York Telephone Company is simply not engaged in the business of providing "debugging" services either to its subscribers or to the public at large. Telco renders telephone service, an adjunct of which is telephone maintenance and repair. To my knowledge, any alleged "debugging" services rendered by Telco would be rendered not as a revenue producer, but rather only as an incident to the rendition of telephone service to its subscribers.

20. Plaintiffs claim that Telco's refusal of its Ad was motivated by Telco's desire to restrain competition in the

"debugging" business impresses me as being outlandish. Telco refused plaintiffs' Ad for the reasons set forth in its printed Standards and Practices, a copy of which was furnished by me to plaintiff William Katz and annexed by him to plaintiffs' moving papers. Even plaintiff appears to acknowledge that Telco's main business is the rendition of telephone service on telephone equipment and systems owned by Telco and furnished, at fixed rates, to Telco's subscribers. The classified directories published by Telco are replete with pages of display advertising by other telephone equipment and systems suppliers who are in no way connected with New York Telephone Company or the Bell System. I respectfully refer the Court, for example, to pages 1842 through 1850 of the 1975 classified directory for the borough of Manhattan. Copies of these pages are hereto annexed as Exhibit B to this affidavit. How can plaintiff reconcile his claim that Telco effectively denies to its actual or potential competitors access to Telco's classified directories, given the extensive listings which are contained in Exhibit B hereto and which were published almost a year before plaintiffs even began their business enterprise. In summary, Telco has not refused access by plaintiffs to its classified directory for any remotely anti-competitive reasons. Rather, Telco has refused to publish an Ad which runs afoul of its

standards and practices for the reasons contained in those standards and practices.

A.T. & T. and Other Bell System Companies

21. I am at a loss to understand why American Telephone and Telegraph Company has been named a defendant in this lawsuit, since the lawsuit involves the classified directories of Telco and not of A.T. & T. American Telephone and Telegraph does not publish any classified directories. A. T. & T. does not control Telco policy regarding the publication of Telco classified directories. It is a fact that A. T. & T. from time to time publishes suggested Standards and Practices relating to the publication of classified directories by Telco and other Bell System operating companies, but these suggestions are just that, i.e., they are no more than recomendations and are not binding upon the individual companies.

22. It is true nevertheless that A.T. & T., like Telco, has an abiding concern for privacy in communications and has indeed recommended practices and policies consistent with those involved in Telco's refusal to publish plaintiffs' proposed Ad in this case.

23. In their moving papers, plaintiffs claim that the form of advertisement rejected by Telco in this case is acceptable to other telephone companies and they attach as exhibits photocopies of advertisements copied from classified directories

published by other Bell System telephone companies. This claim by plaintiffs and the indicated attachments to their moving papers may be viewed as confirming what I have said above with regard to A.T. & T. recommendations regarding the publication of classified directories, namely, that such recommendations are not binding on the individual operating companies who comprise the Bell System. Each company has the right to make its own decision and to establish and apply its own standards and practices for the printing of classified directories. On the other hand, the attachments to plaintiffs' complaint may indicate that the advertisements referred to by the plaintiffs were inserted as a result of error or oversight in the classified directories of these other telephone companies. On Wednesday, February 18, 1976 I had an opportunity to examine plaintiffs' moving papers and the attachments thereto. I was frankly surprised by the text of some of the Ads attached by plaintiffs to their moving papers. I telephoned my counterparts at Chesapeake & Potomac Telephone Company and Michigan Bell Telephone Company. I was advised by Ms. Dorothy Liss, General Administrative Assistant in the Directory Department at Michigan Bell that the advertisement cited by plaintiffs was inserted in that company's classified directory as a result of error or clerical oversight and that the Ad in question will not appear in the same form, i.e., with the reference to "debugging service and equipment" in future

editions of Michigan Bell's classified directories. I also contacted Mr. Chris Justis , Directory Supervisor at Chesapeake and Potomac Telephone Company, who gave me a similar report with respect to the C. & P. telephone classified Ad cited by plaintiffs. Mr. Justis advised me that in future Chesapeake and Potomac classified directories the Ad cited by the plaintiffs in this case will be revised in order to conform with Chesapeake and Potomac's standards and practices which may or may not be more stringent than those of Telco.

Conclusion

24. The classified directories published by Telco are massive volumes containing a tremendous amount of information which is disseminated to the public at large. It is respectfully submitted that the Telco must be able to exercise reasonable controls over the format of that publication and must as well be permitted a reasonable amount of control and the ability to determine appropriate policies, standards and practices relating to the content of advertisements submitted for publication. This is especially so in light of the fact that large segments of the public naturally enough consider Telco itself to be a party to any representations made in its published directories and to any practices carried on by advertisers who are listed therein. I wish the plaintiffs well in their business enterprise and will refrain from telling them how to run their business. It is my earnest hope that plaintiffs, and if not plaintiffs this Court,

will permit Telco and your affiant to run their own business and to refrain from substituting their judgment for the experienced business judgment of Telco in these matters.

25. I am advised by counsel and I verily believe that the plaintiffs' complaint is without merit and should be dismissed and further, that the plaintiffs' application for a temporary restraining order and preliminary injunction is similarly without merit and should in all respects be denied.

WHEREFORE, the motion of plaintiffs for a temporary restraining order and preliminary injunction should in all respects be denied and the plaintiffs' complaint dismissed.

JAMES R. BENNETT

Sworn to before me this
20th day of February, 1976.

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TABLE OF CONTENTS

Alphabetical Directory..... Pages 49-119
Bus Routes..... Pages 38 & 39
Business Directory..... Pages 1-37
Churches & Synagogues..... Page 40
Map Of Jackson Heights..... Page 48
Organizations & Associations..... Page 43
Personal Phone Numbers..... Pages 45-47
Professional Directory..... Inside Front Cover & Inside Back Cover
Themes & Schools..... Page 41
ZIP Codes..... Page 42

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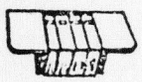

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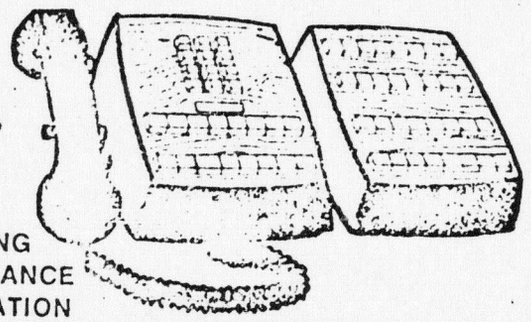

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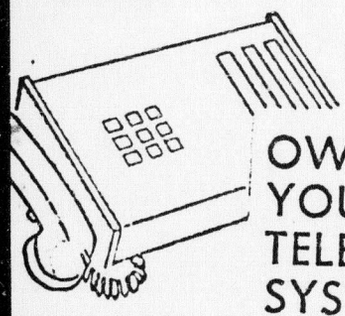

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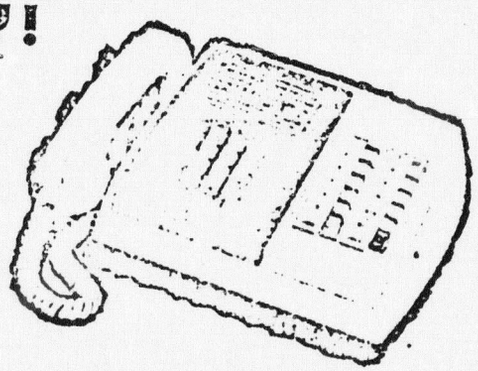

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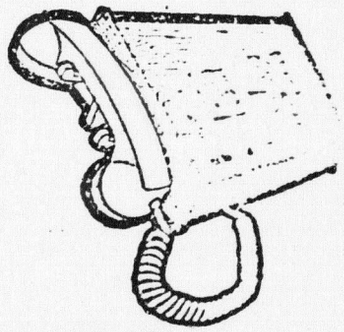

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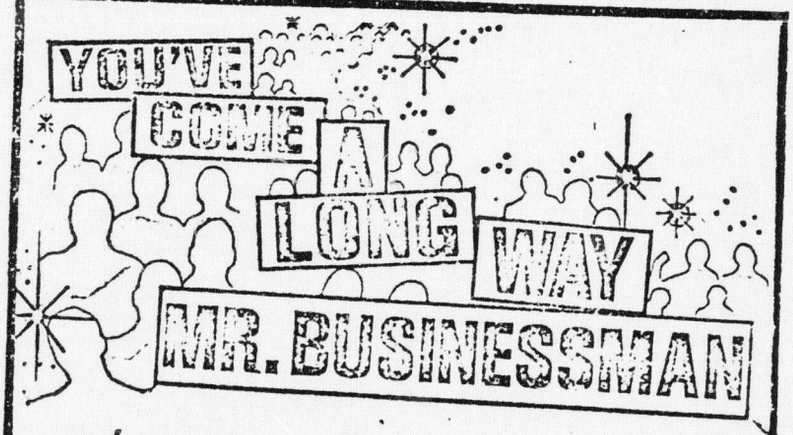

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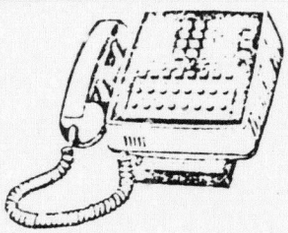

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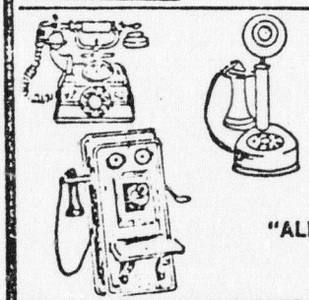

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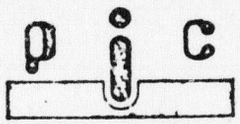

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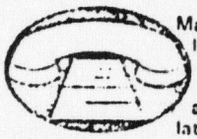

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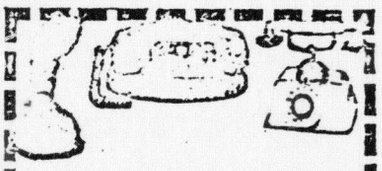

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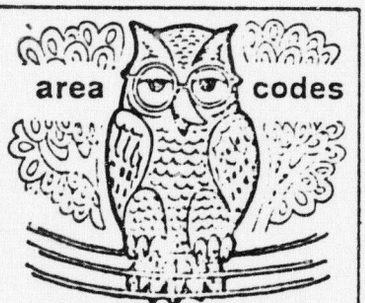

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Be sure to include your area code when you leave a message. And avoid wrong numbers by dialing the area code when you're calling outside your area code region.

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ustomer-provided
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neral Information

ipment provided by a customer may be used with the mpany's facilities if such use complies with the Company's ffs. These tariffs permit installation of both voice and data smitting equipment. However, customer-provided equipnt (other than decorator telephones modified by the Telene Company) must be used with prescribed Telephone mpany furnished protective and signaling devices for which harge is made, and must meet the technical criteria debed in the Company's tariffs. The tariffs do not permit wall ks, plugs, extension cords, etc., not provided by the Comy to be connected directly to Telephone Company lines.

tariffs are designed in the interest of good telephone vice and to prevent hazards to customers and Company ployees. A customer's service is subject to suspension or mination when customer-provided equipment or wall jacks, gs, extension cords, etc., are used in violation of these ffs.

ervice charge will apply when and if the Company makes a air or service call and the trouble is found to result from use of customer-provided equipment.

se regulations are binding on both the Company and the tomer.

New York Telephone

hone Equip. & Systems (Cont d)

mmunications Assistance for Managmnt Inc
1465Bway ---------- 757-1060

COMMUNICATIONS SYSTEMS INC
—See Our Display Ad Page 1848—
5 Oak GrnwchConn -- NYC Telno-378-1350

hone Consumers Svce Co-Operative
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▶ Telephone Intercommunication Systems

See "Intercommunication Equip., Systems & Svce."

▶ Telephone Interconnection Equip.

See "Telephone Equip. & Systems"; also "Intercommunication Equip., Systems & Service"

▶ Telephone Market Surveys

See "Market Research & Analysis"

▶ Telephone Secretarial Service

See "Telephone Answering Service"

▶ Telephone Soliciting & Sales Interviewing Service

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Data Analysis Assocs 52VandrbltAv ----749-0500

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See "Stenographers—Public"; "Office & Desk Space Rental Service"

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See "Wake-Up Call Svce."

▶ Telephones—House & Institutional

See "Intercommunication Equip., Systems & Service"

▶ Telephones—Intercommunication

See "Intercommunication Equip., Systems & Svce."

▶ Telephones—Radio

See "Radio Communication Equip & Systems"

▶ Telerreceptores

Vea "Television" titulos

▶ Telescopes

American Thermo-Ware Co 16Waren ----267-1126

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JerseyCityNJ --------NYC Te[illegible]

Teleline Communications Corp
260WBway ---------- [illegible]

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SALES OFFICE
TELETYPE CORPORATION
90ClintonRd Fairfield NJ ----[illegible]
PRODUCT SERVICE CENTER
TELETYPE CORPORATION
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Teletypist Svce 11338way ---------- [illegible]

VAN'S WZDLT ELECTRONICS
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657ValleyRd GilettNJ --------[illegible]

▶ Teletypewriter Equip.

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Spare and Replacement Parts
360Canal ---------- [illegible]

C & W TECHNICAL SERVICES INC
110Stateway[illegible]10
Whippany NJ - ----------[illegible]

ECCO BUSINESS SYSTEMS INC
Teletypewriters-Teleprinters
Sold - Rented - Leased
Free Systems Planning & Design
50E42St NYC ----------[illegible]

Extel Corp 76Beaver ----------[illegible]

EXTEL CORP
Sales & Service On All Extel Manufactured Equipment
76BeaverSt ----------[illegible]

NATIONAL TELETYPEWRITER CORP [illegible]

PHILMAR ELECTRONICS INC
Parts for Teletypewriters - Also for Mite
Mason Morrisonville ----- [illegible]

Singer Prods Co Inc 1WorldTradeCtr [illegible]

Telemechanics Inc
[illegible]ShieldsAv WhitePk ----- [illegible]

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SALES OFFICE
TELETYPE CORPORATION
90ClintonRd Fairfield NJ ----[illegible]
PRODUCT SERVICE CENTER
TELETYPE CORPORATION
90ClintonRd Fairfield NJ ----[illegible]

United Teletypewriter Repairs
Teletypewriter Equipment Serviced & Repaired
[illegible]5Av ----------[illegible]

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IMPACT MARKETING SERVICES INC.

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False start?

If someone picks up an extension phone on your line while you're dialing, hang up and start again. The "click" from the extension pick-up may prevent the call from going through or may result in a wrong number.

PFW:dr. 2/20/76

94A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiffs,

- against -

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION,

Defendants.

---

76 Civ. 770

Judge Canella

AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

WILLIAM F. McGARTY, being duly sworn, deposes and says:

1. I am employed by New York Telephone Company ("Telco") as a Security Supervisor. I have been employed by Telco for 29 years. I have served in various capacities for Telco in the Plant Department which installs and repairs communications facilities owned by Telco. I have worked in Telco's Security Division for approximately 8-1/2 years, for two of which I served as an investigator and for the balance of which I have served in my present capacity as Security Supervisor.

2. I make this affidavit in opposition to the pending motion of plaintiffs for a temporary restraining order and a preliminary injunction, and I have personal knowledge of the matters hereinafter set forth, except where I have indicated a specific statement to be made upon information and belief, and in such instances the source of my information and the grounds for my belief are the books and records of Telco and conversations had by me with Telco employees.

Plaintiffs' Application

3. I have briefly and in a summary fashion examined the affidavit submitted by plaintiff, Jonah Triebwasser, in support of plaintiffs' pending motion, and I have noted the claim that the defendant Telco "performs the very same services [debugging services] that the plaintiff seeks to provide to the general public". To the extent that this claim is designed to suggest to the Court that the defendant Telco is in the business of debugging, the suggestion is misleading and inaccurate.

4. New York Telephone Company is not engaged in the business of debugging telephones or telephone facilities for profit. Upon information and belief, Telco earns its revenues from the rendition of telephone service and the provision of telephone facilities and equipment to its subscribers. It advertises and encourages use of the telephone as a means of communication, and the nature of its advertisements in the news and broadcast media is, no doubt, well known to the Court. Telco does not advertise or otherwise solicit customers or subscribers for telephone debugging services.

5. As an adjunct, or as part and parcel of the telephone service which it renders to its subscribers, Telco also provides repair service for telephone equipment and facilities which it owns and which it leases or rents to the public. In brief, where a telephone subscriber reports to Telco that there is a problem with the subscriber's telephone which inhibits or prevents the intended use of the telephone, Telco will dispatch personnel to make the repairs required in order to render the telephone usable.

This is not a separate or, upon information and belief, profitable aspect of Telco's business. Rather, upon information and belief, it is a cost of doing business. In brief, Telco leases telephone equipment to a subscriber and earns money from the subscriber's use of the equipment and facilities. If there is a problem with the equipment, then Telco will repair it upon the subscriber's request.

6. I am fully familiar over the course of my extended employment by the defendant Telco with instances where Telco is called upon to examine a telephone instrument and related telephone equipment and facilities in order to determine whether or not an eavesdropping device, "bug", or other foreign device or object has been inserted in or attached to Telco facilities or equipment. Telco does not initiate such activity on its own, but rather performs this service in response to the request of its subscriber and in order to protect its own property, namely, its telephone equipment, facilities and network. In this respect, so-called "debugging" service is indistinguishable from other more routine repair services rendered by Telco to its subscribers.

7. In connection with the inspection of telephone facilities and equipment, undertaken upon the subscriber's request by repair and/or security personnel of Telco, to determine whether any such eavesdropping, recording or other foreign device has been inserted in or affixed to Telco property, there is no separate or special charge or fee or price imposed upon the subscriber. Rather, such services, like other and more routine repair services

rendered by Telco, is rendered in conjunction with and as part and parcel of telephone service to the subscriber. In summary, "debugging" is not the business of New York Telephone Company.

8. I have reviewed the advertisement proposed for publication by the plaintiffs in this connection and it suggests to me at least, the following:

(a) Plaintiffs purport an ability to remove listening devices "from your telephones, home or office". Obviously, Telco does not ever become involved, either as a "business activity" or in connection with repair services rendered to a subscriber, with the detection or removal of listening devices from homes or offices. To the extent that Telco is at all involved in such detection and removal activity, as I have emphasized above, Telco's concern and work relates only to telephone instruments, equipment and facilities, that is, to Telco's own property.

(b) The plaintiffs' proposed advertisement suggests the ability of plaintiffs to detect and remove listening devices from telephones. This raises a question in my mind as to how such detection and removal can be accomplished without either connecting or disconnecting, or otherwise tampering with, equipment which, in the case of Telco subscribers, is the property of Telco. In my experience, I am unaware of any method or manner by which an electronic listening device can either be detected or removed from a telephone without physically handling or tampering with the telephone equipment and facilities. It is not at all

clear to me that the plaintiffs would have the right so to connect, disconnect or otherwise tamper with Telco facilities and equipment.

Telephone Service Procedures

9. It is not usual for a telephone subscriber to contact Telco and report a suspicion, either by virtue of a clicking noise on a line or some other suspicious noise, that a recording or listening or other eavesdropping device has been placed on the subscriber's telephone line. When such calls are received, Telco has established procedures for handling these matters.

10. Most often, the subscriber who initiates the call or complaint will either directly contact or will be referred to the repair service bureau of Telco. The service bureau employee will obtain identifying information as to name, address and telephone number and will report the subscriber's call to his superior. If the subscriber has requested that a security check be made of the Telco equipment servicing that subscriber, then the repair service foreman will, before taking any other action, report the situation to the Security Division where I am employed. My department or division is, consequently, often involved from the outset in such matters.

11. Repair service personnel will perform an elaborate series of checks and procedures on the subscriber's telephone instrument and on the telephone facilities, lines and networks involved in rendering telephone service to that subscriber. If

no irregularity is discovered, the customer is so advised. On the other hand, if an irregular condition is discovered, the Security Division is immediately notified. No corrective, repair or other action is taken by the repair service employee, unless the condition or device or foreign object which has been discovered is such as to interfere with Telco's ability to render telephone service either to the subscriber in question or to other subscribers who may be attempting telephone contact with the telephone line in question. This situation would include the case, for example, where a subscriber could not make outgoing or receive incoming calls because of line blockage brought about by the foreign object or device. Even in this respect, therefore, it is evident that the repair personnel are performing a repair service to permit use of the telephone, rather than a "debugging" service, as such.

12. Where the foreign object or device is not creating a service problem, it is not removed or otherwise treated by the repair service employee. Security personnel are called to the scene and are trained and capable in identifying such foreign devices or objects as actual or apparent listening, recording or other eavesdropping devices. Security Division personnel, upon confirming that such a situation exists, immediately notify the public authorities, to wit, the District Attorney's office of the County where the telephone facilities are located. No repair or "debugging" service of any sort is then rendered, pending the instructions of the public authorities.

Telco's Commitment to Privacy in Communications

13. Privacy of communications is a basic and prime concern of New York Telephone Company. It is a goal to which Telco is commited and Telco is most sensitive to any infringement or even possible infringement of this privacy, to which Telco subscribers are certainly entitled. Telco simply cannot afford to be careless in this area and would much prefer to be accused of too much, rather than too little care in connection with this policy.

Conclusion

14. I am advised by counsel and I verily believe that the complaint in this action is without merit and should be dismissed and that plaintiffs' application for preliminary injunctive relief is likewise without merit and should be denied.

WHEREFORE, the application of plaintiffs for a temporary restraining order and preliminary injunction should in all respects be denied and the complaint should be dismissed.

SWORN TO before me this
20th day of February, 1976.

RICHARD H. BYNUM
Notary Public, State of New York
No. 03-0526610
Qualified in Bronx County
Commission Expires March 30, 1977

WILLIAM F. McGARTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiffs,

-against-

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION.

DOCKET NUMBER 76 Civ. 770 (JMC)

SUBPOENA DUCES TECUM

- -X

TO: AMERICAN TELEPHONE & TELEGRAPH COMPANY
195 Broadway
New York, New York

YOU ARE HEREBY COMMANDED TO APPEAR at The United States Court House, Foley Square, New York, New York, before the HONORABLE JOHN M. CANNELLA, in courtroom 102 at 9:30 o'clock in the forenoon on the 23rd day of February, 1976, in connection with the above entitled action, to testify on behalf of plaintiff, TRIEBWASSER & KATZ, in the above entitled action, and bring with you the books, papers, documents and any and all records, documents, correspondence, memoranda, internal records, cost projections, cost estimates, cost reimbursements, filings with the New York Public Service Commission, or any other filings with Agencies or Commissions of the State of New York, or the United States of America relating to telephonic surveillance,

RASHICH, FINLEY and POSTEL
01 MADISON AVENUE
EW YORK, N. Y. 10022
(212) PLAZA 5-1500

"de-bugging", searches of customer and plant equipment for electronic eavesdropping and wiretapping.

DATED: New York, New York
February 20, 1976

RAYMOND F. BURGHARDT

CLERK

By: G Harbison

DEPUTY CLERK

(S E A L)

ASHICH, FINLEY
and POSTEL
1 MADISON AVENUE
W YORK, N. Y. 10022
(212) PLAZA 5-1500

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiffs,

-against-

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION.

DOCKET NUMBER 76 Civ. 770 (JMC)

SUBPOENA DUCES TECUM

- -X

TO: NEW YORK TELEPHONE COMPANY
1095 Avenue of the Americas
New York, New York

YOU ARE HEREBY COMMANDED TO APPEAR at The United States Court House, Foley Square, New York, New York, before the HONORABLE JOHN M. CANNELLA, in courtroom 102 at 9:30 o'clock in the forenoon on the 23rd day of February, 1976, in connection with the above entitled action, to testify on behalf of plaintiff TRIEBWASSER & KATZ, in the above entitled action, and bring with you the books, papers, documents and any and all records, documents, correspondence, memoranda, internal records, cost projections, cost estimates, cost reimbursements, filings with the New York Public Service Commission, or any other filings with Agencies or Commissions of the State of New York, or the United States of America relating to telephonic surveillance,

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nd POSTEL
ADISON AVENUE
ORK, N. Y. 10022
PLAZA 8-1500

Rec'd 5:25 P.M. No Fee Collected.
2/20/76.

"de-bugging", searches of customer and plant equipment for electronic eavesdropping and wiretapping.

DATED: New York, New York
February 20, 1976

RAYMOND F. BURGHARDT,

CLERK

By: G Harrison

DEPUTY CLERK

(S E A L)

HICH, SINLEY
d POST
ADISON AVENUE
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PLAZA 8-1200

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiff,

-against-

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY AND REUBEN H. DONNELLY CORPORATION

Defendants.

- X

DOCKET NUMBER
76 CIV 770 (JMC)

ANSWERING AND SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

WILLIAM KATZ, being first being duly sworn deposes and says:

I am a partner in the firm of TRIEBWASSER AND KATZ, the plaintiff, and I am making this affidavit in reply to certain opposing affidavits of the defendants and in further support of the plaintiff's application for a preliminary injunction. Any and all of the facts and circumstances recited in this affidavit are not on information and belief, but are from my own personal knowledge.

The basic thrust of this action is as follows: the plaintiff, a duly licensed private investigating firm desires to place advertisement in defendant NEW YORK TELEPHONE's,

TASHICH, FINLEY and POSTEL
41 MADISON AVENUE
NEW YORK, N. Y. 10022
(212) PLAZA 5-1500

hereinafter TELCO'S, YELLOW PAGES directories for the metropolitan New York area. This advertisement was to carry certain language which would advise the general public that the plaintiff has the capabilities and the expertise to "...detect and remove unwanted and illegal electronic listening devices from your telephone, home and office". Needless to say the service we wish to offer is totally legal and with regard to the telephone is the same service that TELCO offers to its subscribers and customers as an adjunct to providing telephone communications to the general public.

The proposed advertising was not accepted by the defendants and your deponent was advised the refusal of acceptance of this advertisement was due to the policy of the defendant AMERICAN TELEPHONE & TELEGRAPH which prohibits the use of certain words in YELLOW PAGES directory advertising. Apparently A.T.&T. has a repugnance to any mention of the words "debugging" or "detection of illegal listening devices" or any words which point to the vulnerability of telephone communications being intercepted, and thus goes and assumes an extreme position which prevents any mention of legal services which may be rendered in connection therewith.

Plaintiff's burden of showing facts and acts by the

CASHIN, FEELEY and POSTEL
11 MADISON AVENUE
W YORK, N. Y. 10022
(212) PLAZA 5-1502

defendants which comprise the wrongs complained of is extremely difficult since all of the information relating thereto are in the defendants' custody and control. Subpoenas have been issued for the production of certain books and records for the argument of the motion for a preliminary injunction, however in order to supplement these subpoenas, this affidavit together with attachments is being submitted.

Firstly, our attorney advises us that the defendants' papers are also being submitted in support of a "cross application to dismiss the complaint". We are advised by counsel and it is axiomatic under the Federal Rules of Civil Procedure that a motion to dismiss may be made either pursuant to Rule 56 or to Rule 12 of the Federal Rules of Civil Procedure. We submit that there is no cross motion presently pending before this court seeking such a dismissal and that at best these papers may be read in opposition to our motion for preliminary injunction pursuant to Rule 65.

While it is clear that the defendants have misconstrued the Rules and have thus mislabelled their answering papers it is even clearer that the gentlemen who are averring do not know whereof they speak. We are not suggesting that these are latent mischaracterizations of truth, but rather show total and abject ignorance on the part of the deponents.

CASHICH, FINLEY and POSTEL
41 MADISON AVENUE
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JAMES R. BENNETT after first advising this Court of long and presumably well rewarded tenure with the telephone company is at a loss to understand why AMERICAN TELEPHONE AND TELEGRAPH has been named as a defendant in this lawsuit, since the lawsuit involved the classified directories of TELCO and not of A.T.&T. "...A.T.&T. does not control TELCO policy in regard to the publication of TELCO classified directories." Apparently MR. BENNETT is unaware of the existence of one H.W.WILLIAM CAMING, Esquire, an attorney for the AMERICAN TELEPHONE AND TELEGRAPH COMPANY. That gentleman within the past year testified before the National Wiretap Commission at Washington D.C.. Attached hereto as EXHIBIT ONE is the printer's proof of the testimony of MR. CAMING. The markings on the exhibit should be disregarded since they were made either by your deponent and/or the printer.

Further, attached hereto as EXHIBIT TWO, are the **actual** compilations of **discovered** wiretapping and eavesdropping devices for the period 1967 through 1974 throughout the United States which were found as a result of the activities and services rendered by the various telephone companies owned and/or controlled by AMERICAN TELEPHONE AND TELEGRAPH.

Totally contrary to BENNETT's statement that A.T.&T. does not control TELCO and TELCO's policy is MR. CAMING's

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testimony that A.T.&T. establishes any and all policy relating to debugging and advertising thereof in YELLOW PAGE directories. CAMING further testifies that there are 23 telephone operating companies in the United States all but two of which are wholly owned subsidaries of defendant A.T.&T., and "...in those two companies we have a very substantial shareholder interest." See pages 852 and 853 of EXHIBIT ONE. MR. WALSH's and MR. BENNETT's protestation that their parent A.T.&T., is thus not to be sullied by this lawsuit is quite inappropriate, in effect it is A.T.&T.'s financial might and control of TELCO that has mandated a policy and standard throughout the United States that makes "...equally unacceptable so called debugging advertising (i.e. advertising stating or implying electronic devices or services will be provided for the detection of and removal of wiretaps and eavesdropping bugs) on the theory that all those who can debug also possess the capability to bug and wiretap." At page 863 of EXHIBIT ONE. In fact, it is interesting to note that the Illinois Bell Telephone has the identical language in its restriction for debugging advertising as the defendant TELCO. Rather than as BENNETT suggests the defendant A.T.&T. does not merely suggest standards and practices, but rather to use the vernacular, "rams it down the throats" of their subsidiaries.It is also interesting to note the two or three

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telephone companies who have allowed such advertisement after being called by BENNETT have termed these advertising items as "mistakes" and "oversights" and will now promptly fall in line and be in the fold of Ma Bell.

As Mr. Westin, a member of the National Wiretap Commission noted at page 851 of EXHIBIT ONE, this policy denies access to important publication for business and commercial purposes and does not allow for dissemination of that service to the general public. BENNETT, like MR. CAMING before the National Wiretap Commission, suggests that the plaintiff has alternative publications in media available to him. CAMING before the Commission suggested that anybody interested could contact the Better Business Bureau, the Chambers of Commerce, the F.B.I. etc.. Neither of these gentlemen are willing to concede that the YELLOW PAGES directories are the only practical way to reach our potential clients since the YELLOW PAGES directories are totally wedded and consonant with telephone services.

Both BENNETT's and CAMING's suggestions are ridiculous and based on totally false premises. BENNETT wishes us to place an advertisement in "the 1975-1976 'GREEN BOOKS', a directory published by Larry Bard Associates, Inc., located in the Borough of Queens", he would have this Court

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(212) PLAZA 5-1500

believe that the some 13 "GREEN BOOKS" would in conjunction with newspaper and broadcasting advertising allow the plaintiff some equal chance in the market place as would the proposed ad in defendants' YELLOW PAGES. This position by one as experienced as defendants' deponent BENNETT in directory advertising seems obviously to run in direct opposition to all of the published sales data available to plaintiff, most of which was supplied by defendant DONNELLY. A careful examination of these facts would indicate to your deponent that to duplicate the reach and effect of the proposed advertisement, by use of these alternative media, would increase plaintiff's cost by no less than 200 times; increasing plaintiff's YELLOW PAGES budget by $12,000.00 per year to $2,400,000.00. I can assure this Court that this expenditure proposed by defendants' deponent BENNETT would far exceed the ability of the plaintiff, and thereby result in plaintiff being afforded no method of making the public aware of the services proposed in the advertisement deemed offensive by the defendants.

Further, BENNETT wishes this Court to believe that these "GREEN BOOKS" are identical to defendants YELLOW PAGES directories. I must marvel at BENNETT's lack of understanding of the blatant differences between defendants' and other directories. Certainly BENNETT knows,

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2) PLAZA 5-1500

after his years of directing TELCO's operations, that the YELLOW PAGES, published by the defendants, is the only directory that is delivered to each and every subscriber of telephone service within this area and that further it is these same exclusive directories or YELLOW PAGES that are hand carried into each and every new subscriber's home or office by one of the 90,000 outside plant personnel employed by the defendants.

Contrary to the picture painted by the defendants, it is by virtue of the unique and exclusive relationship between YELLOW PAGES and TELCO and the defendants' monopoly, granted by the State of New York, that the YELLOW PAGE directories are, in fact, the only way to reach each and every telephone user in the plaintiff's market area.

Plaintiff's studies of advertising method used throughout the countermeasures industry and specifically our detailed studies of the use of media by the Dektor Corporation indicate the following; 1.That all media, except YELLOW PAGES advertising, have failed to bring in business for countermeasures surveys; and 2. That YELLOW PAGES advertising accounts for more than 60% of the countermeasures survey business of Dektor. (The other 40% is from referrals from prior countermeasures customers and acquaintances developed over the years, a source obviously unavailable to the plaintiff due its new venture status.)

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Another example is TELCO's own figures, "92 million adults use YELLOW PAGES each year," or "3 out of 4 adults in the United States." CAMING, on the other hand, would wish us to make inquiry of certain "accredited" organizations.

Hoping that CAMING's idea might prove true, I personally, on February 20, 1976, called the Chamber of Commerce at their mid-Manhattan office and spoke to Mrs. Solomon. The only reference that she gave was the NEW YORK TELEPHONE COMPANY and the New York Police Department. She could not direct me to any individual private firm. I further telephoned the Chamber of Commerce and Industry and spoke to a Miss Fehr; she again referred me to the defendant TELCO.

I even called the NEW YORK TELEPHONE COMPANY, the defendant herein, and was told by one of their agents by the name of Dudley that "no one here knows anything about such service outside of the NEW YORK TELEPHONE COMPANY" and was advised to call their repair service. The Better Business Bureau and the F.B.I. also referred me to the defendant TELCO or suggested I look in the YELLOW PAGES.

It is clear that the above proves BENNETT and CAMING wrong. In fact it proves conclusively that the YELLOW PAGES are "the only game in town", and since the YELLOW PAGES are so intrinsically involved with the

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the acquistion of business services over the telephone, not to advertise in the YELLOW PAGES is sure economic suicide. Thus, denial of access to the YELLOW PAGES coupled with the defendants rendering the same service is a clear and convincing restraint of trade.

BENNETT further makes much of the fact the defendant TELCO on pages 1842 through 1850 of the 1975 classified directory, for the borough of Manhattan, has allowed its competitors to advertise competing telephone equipment and systems. What Bennet fails to advise this Court is that the same directories of ten years ago were devoid of any such advertising, and that in point of fact, such equipment was taboo and contrary to the defendants' standards and practices.

Perhaps MR. BENNETT has forgotten the impact of CARTER v. AMERICAN TELEPHONE AND TELEGRAPH COMPANY which specifically allowed the use of interconnect equipment and thus forced the defendants to allow such advertising.

With regard to WILLIAM F. McGARTHY's affidavit as to what is possible and is not possible relative to debugging and bugging I am attaching hereto as EXHIBIT THREE a recent article from the New York Times relating

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2) PLAZA 5-1500

to a patent, number 3939420 which refutes his allegation and puts into question his expertise.

From all of the affidavits in opposition and from the testimony before the Commission, it is clear that A.T.&T. operated telephone companies in the United States, including TELCO, have some ninety thousand outside plant personnel who respond to customer requests for telephone countermeasures surveys to detect wiretaps and bugs on the subscribers equipment or the telephone plant. They respond making "...very exhaustive investigation of every complaint," and there are at least ten thousand requests for debugging sweeps each and every year in the Bell System in the United States. See page 842 of EXHIBIT ONE.

EXHIBIT TWO specifically points out that there are a great number of wiretapping and eavesdropping devices found in the United States by the telephone company personnel on the lines, facilities, equipment and instruments of the associated operating companies owned by A.T.&T. for the period January 1, 1967 to June 30, 1974. NEW YORK TELEPHONE, the defendant herein, did in fact render this service and found 26 devices.

The fact that the defendant TELCO is not "paid" for

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this service, but is simply reimbursed, is not an issue. It is clear that the defendant NEW YORK TELCO engages in the very same service or business that the plaintiff wishes to engage in and it is eminently clear that the defendants' control of the YELLOW PAGE directories precludes access to the only practical medium to reach potential customers.

I finally turn to the irreparable injuries which we would sustain. I would first wish to point out that not withstanding great complexity and the cost in producing the YELLOW PAGES, the defendant would not be harmed if for but a brief and shining moment an advertisement appeared bearing our offer to "detect and remove unwanted and illegal electronic listening devices from your telephone, home and office." The plaintiff, to provide these services has invested TWELVE THOUSAND ($12,000.00) DOLLARS to purchase equipment. Now, to be denied access to a market for our services would result in our certain economic ruin.

To say to us that we may be relegated to pursuing this action in damages, since we are a new and fledging entity, again would render us irreparable injury. We have no way to measure our damages to the fact that we are without a prior record as to our economic viability.

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2) PLAZA 5-1500

Wherefore your deponent respectfully prays an appropriate order granting a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure be granted, and that thereafter a date certain be scheduled for trial in the most expeditious of fashions, and for such other and further relief as to this Court may seem just and proper under the circumstances.

WILLIAM S. KATZ

Sworn to and subscribed
before me this 21 day of
February 1976.

NOTARY PUBLIC

JOHN W. FINLEY, JR.
Notary Public, State of New York
No. 31-6299315
Qualified in New York County
Commission Expires March 30, 1976

NO AFFIDAVIT OF SERVICE BY MAIL

JOHN W. FINLEY, JR.
Notary Public, State of New York
No. 31-6299315
Qualified in New York County
Commission Expires March 30, 1976

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[CHAIRMAN ERICKSON: Mr. Reynolds, we appreciate your coming. Thank you.

The meeting stands recessed until 1:30.

[Whereupon, at 12:50 p.m., a luncheon recess was taken until 1:30 p.m.]

124 514

AFTERNOON SESSION

CHAIRMAN ERICKSON: We will reconvene.

Unfortunately, some members of the Commission are going to have to leave prior to the completion of hearings this afternoon, and for that reason we will try to expedite this as much as possible.

At this time, I would like the remaining witnesses to be sworn.

Mr. Caming, I see, is at the table.

Mr. Beller, Agent Simon, and Mr. Berolzheimer.

[Whereupon, Messrs. Beller, Simon and Berolzheimer were sworn by Chairman Erickson.]

CHAIRMAN ERICKSON: The witnesses, other than Mr. Caming, may return to their seats, and we will proceed with Mr. Caming's testimony.

TESTIMONY OF H. W. WILLIAM CAMING, ATTORNEY, AMERICAN TELEPHONE 0 TELEGRAPH COMPANY

CHAIRMAN ERICKSON: We are fortunate at this time to have Mr. William Caming as a Commission witness. For almost ten years he has been a member of the Legal Department of the American Telephone 0 Telegraph Company. His responsibilities there include oversight over all legal matters pertaining to electronic surveillance, rights to privacy, and liaison with law enforcement authority.

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Mr. Caming will discuss AT0T's current policies in this area and make recommendations for improvements in the law.

I understand you are going to summarize your opening statement.

MR. CAMING: Yes, Mr. Erickson.

I wish to thank the Commission for the opportunity of presenting our views, both on privacy of communication, and our various policies, practices, and experiences.

I wish at the outset to reaffirm the Bell System's long-standing commitment to privacy of communications, one which we feel very sincerely.

We have strongly opposed over the years any invasion of privacy by illegal wiretapping, and strongly endorsed legislation, both at the federal and state levels, which protected such privacy.

We believe, too, that the Federal Omnibus Crime Control Act has contributed significantly to protecting privacy by, among others, clarifying existing law and proscribing, under pain of heavy criminal penalty, any unauthorized interception, use or disclosure of wire communications.

Each of our Bell System companies endeavors to vigorously protect the privacy of our customers' conversations through physical protection of equipment and facilities, by advances in technology over the years, and by thorough instruction and supervision of our employees. 126 5150

Any allegations of illegal activity leveled against any of our employees or any evidence thereof, whether uncovered in our day-to-day operations or brought to our attention by any outside source, is promptly and thoroughly investigated. And if the facts so warrant, prompt disciplinary and prosecutory action is taken.

Additionally, it is long-standing Bell System policy to cooperate fully with law enforcement authorities and other government agencies in their investigations of any alleged illegal activity on the part of any of our employees or others.

You have heard testimony, and I merely need to advert to the fact that yellow pages directory advertising relating to advertisements on wiretapping, eavesdropping, or debugging have long been banned for reasons set forth in my statement.

Just briefly, in the area of cooperation with law enforcement authorities, Bell System companies cooperate with duly authorized authorities by providing limited assistance as necessary to effectuate the particular wiretap order. The assistance generally takes the form of providing line access, record information such as the designation and location of the specific telephone line or lines approved for interception in the court order.

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Under the federal act, in the instance of federal law enforcement authorities and in some eight states and the District of Columbia, which states have appropriate enabling laws, the court order may direct the telephone company to provide limited assistance in the form of information, facilities, and technical assistance necessary to accomplish the particular wiretap unobtrusively and with minimum disruption to service.

Our assistance generally takes the form of a private line channel from terminal to terminal, i.e., a channel from a terminal which also services the telephone line under investigation to a terminal servicing the listening post location designated by law enforcement.

We do mention our cooperation in national security matters in our statement, and I will pass on.

In cooperating with law enforcement authorities, the Bell System does provide the very minimum assistance necessary to accomplish the particular wiretap. Under no circumstances do we do the

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wiretapping ourselves. That, we feel, is the exclusive province of law enforcement authorities. Nor do we furnish them with terminal equipment to be used in connection with the wiretap, such as pen registers or tape recorders, nor do we provide telephone company identification cards, uniforms, tools, or telephone company trucks.

Turning to another subject of the Commission's inquiry, disclosure of corporate toll billing record information, these are corporate records maintained by each telephone company in the ordinary and regular course of its business as necessary substantiation for charges to be billed to the customers, and required by statute. They contain no information as to the content of any telephone conversation or, with limited exception, the identity of parties to any conversation.

This information is held in strict confidence and we divulge it only under valid subpoena or administrative summons, such as that of the Internal Revenue Service.

As a matter of policy, these records are no longer disclosed pursuant to other lawful demands.

In addition, whenever such records are subpoenaed or summoned, the telephone company automatically notifies the company within 24 hours thereafter, except when a law enforcement agency or legislative committee seeking the records specifically requests in writing that such disclosure not be made by certifying that notification could impede and obstruct its official investigation or interfere with enforcement of the criminal law.

Turning to another subject of inquiry, electronic toll fraud, in the early 1960's a most ominous threat to the telephone industry arose in the form of small electronic toll fraud devices, the so-called blue and black boxes. These devices enable the user to circumvent the telephone company's automatic billing machinery which is actuated by electrical signals, and thus the callers can place or receive free calls to or from various parts of the world.

Because these boxes are relatively and surprisingly inexpensive to make, their use has grown at an alarming rate. We estimate, for example, that blue boxes, one of which I will show you in a moment, can be produced at a cost of $25 to $50 per unit, and black boxes at a cost that can be as little as a dollar or so.

Our experience has also shown that these devices have a unique appeal, among others, to the criminal element, whether it be a member of organized crime or an unprincipled businessman. This is so because not only is payment of the lawful telephone charges evaded but also any record of the communication wholly concealed, permitting them to conduct their unlawful activity under a smoke screen of anonymity.

If the Commission would indulge me for a moment, I would like to just show them to you, and very swiftly go through a black box device.

The black box device is placed on the line of the telephone being called. The way it is checked--and I might say the name "black box" came about because the first one found was black as far as an outward cover—and this one, coincidentally, is marked on the back "Japan." 130

The wires leading from the telephone central office after they enter the home are put through here (indicating), and then brought up through here to the hand set of the telephone itself, or the receiver and transmitter. 5154

Now, when a call normally comes in you have ringing, and you pick up the telephone, and when you do that, that off-hook condition--and the telephone line furnishes current which sends back an electrical signal to our automatic billing equipment saying, "The party has answered; the party has gone off hook, and therefore billing should commence." And it is only when that signal is received that a charge is made for the call.

The current is also indispensable in order to talk.

Now, when the call comes in through use of a black box, at the first ring the called party who controls the device will press down this button in the center. By pushing on this button he shuts off the ringing. And he then flicks the on-off switch to the "on" position, furnishing current from this device—which current is furnished by a battery contained therein—to the equipment.

So that he has done two things. He has supplied the necessary electrical current for talking circuit but also blocked the signal so that it does not go beyond this device and nothing goes back to the automatic billing machine.

So from our records standpoint, there is no record of a call having been answered. 131 5155

Another interesting point: The caller, of course, is not charged for the call, since no call is completed, ostensibly.

Additionally, if he is in a coin box, which gamblers have found of great advantage, he gets his money back.

So this type of device also has appeared and we have found them in forms several inches wide, very easily concealable, very easily pocketable, and often very difficult to detect.

I will shortly just touch upon the operation of a blue box.

CHAIRMAN ERICKSON: When you do reach the blue box and compare it with the black box, would you be willing to cause a photograph to be made of the two devices of this type so it could be included in the record?

MR. CAMING: We shall be very pleased to, or if you would find it more convenient we would make the photographs and furnish them to you.

CHAIRMAN ERICKSON: We would appreciate your doing that.

MR. CAMING: And we will see that we do that next week.

MR. HODSON: Eight-by-five glossies, please.

[Laughter.]

[The material referred to follows:]

MR. CAMING: When we were faced with this problem the first time, we were faced with the fact that if fraud could be committed with impunity by the caller and called party, and a large number of these inexpensive devices could flood the market, staggering financial losses would naturally ensue.

Faced with this threat, the Bell System took immediate steps in the early '60's to determine whether it would be necessary to undertake what was a monumental task of redesigning and restructuring the signalling functions of the nationwide telecommunications network, at an estimated cost to our customers which would range upwards from a half-billion to a billion dollars, as well as taking several years to accomplish.

We, therefore, took steps to determine the magnitude of the fraud through instituting a very limited action strictly controlled and rigidly guarded experimental program of scanning and testing the network at only several key representative cities—no more than five at one time—between late 1964 and early 1970, to which reference has been previously made.

Now, we did examine in this area a limited number of trunks, by having the telephone equipment fastened to 100 trunks at each of these five representative locations. In one or two places they were moved to more representative positions. And we could only sample—and it was random sampling—five calls at any one time.

These calls would be mechanically scanned, tested, and looked at by the equipment—there was no human ear involved—and determined whether they were legitimate. It was like putting your hand into a stream, picking out a fish, examining it, and then dropping it back into the stream.

The scanning, testing, and recording were done by mechanical means. If the call appeared legitimate, that is, if the proper supervisory signals were present, then the call would be immediately thrust back.

However, if the call showed preliminary indications of illegality, that is, it looked to the equipment to be an illegal call—that is, one basically of two types: if you could hear voices but there was no current seemingly going to the call and therefore no billing, that was an indication of a black box call. Or if there was a telltale blue box tone, which would be used to seize the network by the caller, that, too, appeared to be an illegal call.

In such cases, and only in those cases, were the calls recorded by equipment associated with this scanning equipment.

The recordings were for limited periods, and this, too, was done by mechanical means.

The equipment that did result in the recording was under very secure conditions, and the recordings were sent for analysis to the Analysis Bureau in New York to insure that there was very limited scrutiny, and particularly examined for two purposes: One, the attempt to determine the statistical magnitude of the fraud, as I mentioned earlier, and secondly, in some cases to determine whether there were any leads as to who the caller or called party might be.

Now, this was first-generation type of equipment which we recognized and was done for the purpose basically of determining the magnitude of the problem.

We were simultaneously working on second-generation equipment, and also working on other methods of detection. And by early 1970 we had reached a stage where we would discontinue the very limited voice recording that went on. As a result, all recording was terminated in this preliminary indication, scanning-of-the-network stage, in May of 1970.

Since then, we have been using effective scanning and testing procedures which have eliminated the necessity of any voice recording during the pre-investigative, as I characterize it, preliminary detection stage of examining the network. These have included extensive use of computers, plant-testing equipment and procedures, and statistical analysis of traffic patterns, and development of more sophisticated network scanning equipment which does not require any voice recording capability.

Just for a moment, the Communications Act imposes on all telephone companies the obligation by statute to prevent such thefts of service. Prosecution has been and continues to be, in our opinion, the only effective deterrent. A minimum amount of recording of a very limited number of illegal calls is still indispensable in a substantial number of cases during the last evidence-gathering investigative stage.

But we are most concerned and have full recognition of the public concern in this area. So to assure to the maximum possible degree the privacy of communication, we employ a series of investigative measures other than voice recording, such as, for example, after getting preliminary indication of illegality, we will use a measuring device, such as a peg count register or its equivalent, which will indicate the telltale tones by recording them on paper tape or a counting mechanism so we can carefully further evaluate the accuracy of any preliminary indications of electronic toll fraud.

Only when a reasonably strong suspicion of such fraud has been firmly and unequivocally

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established, the possibility of any plant trouble ruled out by proper testing, and all other investigative measures exhausted, do we engage in limited recording.

And now we come to the blue box, if I may.

The blue box is the more commonly known box, and its function permits greater flexibility as far as accomplishing theft. As you can see, it is very small. It is portable. You can literally put it in your shirt pocket and be undetected. And this one, too, coincidentally, bears on the back of the case, "Japan."

Normally when you place a call to any of a series of numbers—for example, if you call in a distant city information, which would be in Washington 212 and the traditional 55501212, you would be making what would be called a noncharge call. This means that when you make the call the equipment will record the call but will not bill it to the customer on the automatic billing equipment.

Just to give you a very simple explanation of how our billing equipment works: When you pick up your own telephone as the caller, an off-hook condition is noted in our automatic billing equipment. Then, after you dial the number and all, and the called party answers, a second entry is made in the equipment. And this might be 200 entries later in a busy metropolitan area, because whatever entry is made with different phones going off the hook are recorded in this continuous process and later the computer coordinates the information for each call.

Then, at the completion of the call, when the called party hangs up, there is a third entry. You have time and distance which are the two factors, and then statutorily required billing charges.

When you make a free call, there are the same entries but there is a no-charge condition.

What happens is you may make a call to information or an 800 number, which is a no-charge number, such as calling Hertz or Sears-Roebuck in a distant city, or you may call the business office of the telephone company.

Now, here is how this box would work—and it is quite simple. The party first dials, say, Chicago, which is 312055501212. They dial that on their regular telephone and it goes through the network and you can sort of hear it progressing from your listening. And then you hear the ringing cycle, meaning it is in Chicago at the switching center.

But before the party answers, you then emit the telltale tone (indicating) that is a signal to the equipment that dislodges the call and literally seizes the circuit. It is an internal signal that we use to indicate the circuit is free.

As soon as that is done—and you are now in the toll network, not in the portion going from the local telephone to the local central office, but the actual intercity or more than one central office toll network. There is no reason to have this telltale tone present unless it just happens to be accidentally present during a conversation when that frequency is emitted by some sound in the background.

So after you seize it at Chicago you press the KP, which is the key pulsing button that only a toll operator has.

Then you dial, in Sydney, Australia, say, whatever number you want to, using the code—in the United States or in Sydney or in London. And when you have dialed all that, then you press another button which only the operator has, the start button, and it appears to the equipment that another long-distance call is coming through, so you at Chicago, having seized the circuit, send the call on to its destination.

Now, when the call is completed and your party in Sydney picks up the line, the equipment, not having recognized that an alien body has seized it from distant planets, thinks that you have completed your call to information in Chicago. SI all you have at that point is an entry that you reached the information operator—a no-charge condition. Then when your party in Sydney, Australia, hangs up, the equipment thinks that the information operator, directory assistance operator in Chicago, has hung up. And that is all that shows.

Meanwhile, if you have any facility with this—and as you see, it is acoustically coupled so you don't have to connect it in any way with wires or hard wire—you can then do this (indicating) and start your next call.

So you don't even have to redial Chicago. You can stay on this, controlling the Chicago line that you have seized, and make a series of five or ten calls to all parts of the world. And if you make your next call within a period of seconds after the first call, you are off again. The equipment still thinks, "This fellow is talking a heck of a long time to that directory assistance operator in Chicago."

CHAIRMAN ERICKSON: That blue box, as you denominate it, has a sticker on it. Was this an exhibit in some case?

MR. CAMING: Yes. This was a grand jury exhibit in a particular case on October 24, 1973, and at the conclusion it was provided by the court to us.

CHAIRMAN ERICKSON: Was a conviction obtained?

MR. CAMING: I believe it was. I am not sure with certitude in this particular case, but our batting average has been rather good because we are rather careful before we bring anything to prosecution.

Now, what do we record? Remember, we don't do any recording at all until every other investigative method has been carefully explored, and until we have established by other equipment that this is definitely an illegal call. In other words, we would keep a count, for a day or so, by a counting mechanism of one type or another of the number of times, plus perhaps the various tones dialed, indicating that there was undoubtedly a blue box being used.

Once we have established this and are in our final evidence-gathering stage, the recording is very brief and usually includes three facets: The dialing of the multi-frequency tones of the blue box after the telltale tone of the blue box is emitted. That actuates the equipment. It does not start until then.

And we would record the dialing tones and then the ringing cycle of the fraudulent call and the opening salutation when the party answers. Generally this entire process is 60 seconds or less of voice conversation, and very often it is only 60 seconds for the entire recording, including the ringing and dialing facets.

Now, as part of our continuing concern and review of our operating policy relating to privacy of our communications, we recently have further refined our procedures to require that no such limited recording may take place unless the prior express approval is obtained of the company's Security Manager and the concurrence of the Vice-President, Operations, and the Vice-President and General Counsel of a particular company, or their designee. In this respect, too, as in many others, our systemwide procedures, as in toll billing records and in most of our procedures, are more restrictive than the requirements of the law but reflective of our concern.

Now, I might just say in passing that these crimes have never enjoyed the protection of the law, neither before nor after the passage of Title III. It is of particular interest, though, that almost all these cases go to prosecution, and in these cases our entire process of evidence-gathering has been subjected to close and thorough judicial scrutiny and, of course, a confrontation by the defendant.

This judicial oversight has continued to date with some 325 convictions and a number of pending cases, which indicate not just the number of convictions but the extent to which courts at state and federal level have repeatedly reviewed our procedures for gathering evidence.

With virtual unanimity, the courts have held the methods have been lawful, have been effected independently of cooperation with law enforcement authorities, and are in the public interest.

Now, we have introduced a federal statute proscribing the manufacture, possession, importation, distribution, or advertising of these devices, and the publication of plans, specifications, and instructions for making or assembling or using them. And we have submitted that to thecommission for its consideration.

We feel it would substantially contribute to the containment of this type of fraud. Prosecution for illegal use under a statute such as the fraud-by-wire statute will, of course, continue to be our first line of defense. But a statute of this character would do a great deal to assist.

Now, as in many criminal areas, detection here is very difficult. And the instances of electronic toll fraud that we know about, I think I can frankly say, represent the portion of the iceberg that meets the eye.

We believe that the actual losses currently being sustained by us may be ten or twenty times as great as the profitable losses which we calculate to be on the order of a million dollars or more a year.

Now, we feel, in concluding, that the virtually unchecked use of electronic toll fraud devices which would result if the threat of effective detection and prosecution is removed would impose an overwhelming financial burden on the telephone industry.

You can visualize what would occur if every household had a blue box and a black box. It would require the telephone industry and its honest customers to underwrite the entire cost of these depredations, not only the loss of revenue but the substantial expense of the circuits, facilities, and equipment which are tied up by such illegal use. And these losses would rapidly reach staggering proportions, soaring into the tens and hundreds of millions of dollars, and I think it's fair to say jeopardize our very ability to provide telephone service to this nation.

I would be very pleased to answer any questions that the Commission may have.

CHAIRMAN ERICKSON: We appreciate that very much, Mr. Caming.

Mr. Feldman will proceed with the questioning.

MR. HERSHMAN: If you don't mind, I have just a few questions I would like to ask before Mr. Feldman begins.

At the request of the Commission you supplied us with figures indicating that between January 1, 1967, and June 30, 1974, approximately 1,457 devices were found on the facilities of AT&T and its subsidiaries. Could you tell us, Mr. Caming, how these devices were found?

MR. CAMING: I take it by that you mean who found them?

MR. HERSHMAN: Who found them and in what course of business?

MR. CAMING: Well, as you might well anticipate, Mr. Hershman, they were found in a variety of ways. A great many of them were found by our own telephone people routinely in the course of their day-by-day duties.

We have, for example, some 90,000 Bell System outside-plant personnel who are continuously in contact with the plant, both the outside facilities and in offices and homes. And, of course, there they have on a large number of occasions found these devices.

In addition, whenever a customer requests a plant check for a possible wiretap, we make as exhaustive a search as we possibly can.

Now, admittedly many of these supposed wiretap complaints we can establish are plant troubles, such as static, as I mentioned in my statement, or crackling noises or voices on the line. But if we cannot, we then make a very thorough physical inspection, and frequently the devices have been found as a result of a customer check.

MR. HERSHMAN: How frequently would you say, Mr. Caming?

MR. CAMING: I would not offhand know, but I would say that both methods are contributive to the totals that were achieved. I have no idea of the breakdown, and I don't think it would necessarily control. In both cases the telephone company has found it and our people are very alert to any irregularity or foreign device and are instructed to report immediately.

Now, many times we ourselves determine that it is not what it appears to be. For example, you may find a loose wire and it turns out that it was just left there by a previous installation being closed off.

But we are continually refining our methods. We make a very exhaustive investigation of every complaint. We do not take any of these lightly. We very carefully explore them.

MR. HERSHMAN: Mr. Caming, how many examinations of this nature do you make a year?

MR. CAMING: I beg your pardon?

MR. HERSHMAN: How many searches of this nature do you conduct each year?

MR. CAMING: I would say that we receive in the order of 10,000 complaints, as an average, in the Bell System over a year. And in addition to that, there are, of course, the 90,000 craftsmen that are out every day. And they themselves just regularly keep their eyes open.

MR. HERSHMAN: Mr. Caming, do you have a breakdown of the number of devices found after the initial call from a customer to have his wires checked?

MR. CAMING: I do not know offhand. We could check that out. I do not know whether we do maintain records of that character. The reason I say that is that when we get a request for a check, a wiretap check, in the very, very large proportion of the cases, well over 90 per cent, we can establish through central office testing that these are nothing more than plant difficulties so there would be no reason to keep any check of it. We just advise the customer that we have corrected the condition and found what it was.

So it is only a small percentage that really turn out to require further investigation than the central office electronic testing.

MR. BLAKEY: Mr. Caming, the reason these questions are being asked is there is testimony in our record from private detectives that they found a certain number of devices out of a certain number of checks. Some have indicated as high as one in five.

And, frankly, your experience is something against which we can examine the private detectives' experience. If you have records that would indicate how many times you find devices out of how many times you go out to the house and the phone to look, then we have some objective test as against the private detective statements. And if the material is relatively easily retrievable, it would be of assistance to the Commission.

MR. CAMING: We will certainly check that, Professor Blakey, and if we do keep such records we will, of course, be very pleased to present them to the Commission.

I would say offhand, just based on my own experience, that the figures sound rather on the high side.

MR. BLAKEY: If you don't have the figures exactly, could you---

MR. CAMING: Estimate?

MR. BLAKEY: --cause a reasonable survey to be made of your knowledgeable people and give us the benefit of your best estimate?

MR. CAMING: We will check all of our companies' security departments and plant departments to insure we will either give you the accurate figures or a very close reflection based on our experience.

MR. HERSHMAN: That would be most helpful, Mr. Caming.

The figures that you supplied to the Commission gave specifics on approximately 1,009 devices found since January 1967. Of these devices found, a great majority were reported to law enforcement. However, there still remains a somewhat substantial number that weren't reported to law enforcement, and I would like to know what your policy is and why it was not reported to law enforcement.

MR. CAMING: If I remember the figures off the top of my head, I think 88 per cent or 87.9 per cent of the figures we gave you were reported to law enforcement authorities either at the federal or state level.

And I might, by way of just commentary, say I noticed a newspaper article that commented that only 661 were reported to the Federal Bureau in our figures to you.

MR. HERSHMAN: I believe that was 610.

MR. CAMING: You have the advantage.

MR. HERSHMAN: For the record.

MR. CAMING: But roughly that number. One of the reasons for that is that in many areas—it may not well be appreciated—we react to the requests of local law enforcement whom to report them to.

For example, in New York City in the Queens area, we have been asked by the Bureau to report them to the local district attorney who then filters them, and only those that appear to be of federal interest are reported to the federal authorities.

This accounts for the fact that our total figure is higher than our figures to the Bureau.

We usually report them to whichever agency it is the desire mutually of the appropriate federal, state, and local authorities that we do report it to.

Secondly, of the 12 per cent, it must be appreciated that about 8 per cent of those reflect earlier cases, many of which were situations where the devices were found in remote areas or in satellite—well, in some cases they re found in domestic cases, marital cases, and with the express wish of the parties involved that they not be reported.

I think that accounts for all but about 4 per cent.

Now, our policy itself is to report every case to law enforcement authorities. We do that now generally in all companies with one exception, where they do not report it except with a prior authorization of the customer. And this has been based upon long-standing concern for the fact that the customer may in many instances, because of domestic situations, not desire it. We have urged that company to reconsider its position.

MR. HERSHMAN: Which company is that?

MR. CAMING: It is Illinois Bell Telephone Company. And I think that accounts for 4 of the 12 per cent we are talking about.

But it is Bell System policy that it be reported, and generally it is reported in all cases, both to the customer and to law enforcement.

MR. HERSHMAN: Nonetheless, if the customer requests that it not be reported, then———

MR. CAMING: In the case of Illinois Bell, they report it only if the customer requests it or they tell the customer that they will be very pleased to cooperate fully with law enforcement if the customer wishes them to go forward with it.

MR. HERSHMAN: If Congress took steps to mandate the reporting of all illegal devices to law enforcement authorities, would that bother you greatly?

MR. CAMING: Would that bother us greatly?

MR. HERSHMAN: Yes.

MR. CAMING: Not at all. It is the Bell System policy.

MR. HERSHMAN: Except in Illinois.

MR. CAMING: Except in Illinois, and I think I can say that if the Commission expresses grave concern on that———

MR. HERSHMAN: Oh, I think the Commission does.

MR. CAMING: —we in talking to our confreres in Illinois Bell will bring that to their careful attention.

MR. HERSHMAN: My personal opinion is that it is the responsibility of the telephone company when a device is found to report it to law enforcement.

MR. CAMING: It certainly is a policy that we subscribe to and one which we have very carefully followed, with the exception of Illinois Bell which requires the prior authorization of customers at this time.

MR. HERSHMAN: Mr. Caming, we had testimony yesterday from a private investigator in the Los Angeles area who was quite disturbed that he was not allowed to advertise his debugging services in the yellow pages. He expressed his belief that one of the motivations the telephone company has in not allowing debugging services to advertise was because they were afraid debuggers would eventually find illegal wiretapping conducted by the telephone company.

For the purpose of these hearings and our record, I would like you to explain exactly why it is you do not allow debuggers to advertise.

MR. CAMING: I'd be very pleased to.

It was in the early '40's or so when wiretapping was declared illegal that we banned all advertising relating to wiretapping from the yellow pages as publishers of the directories.

In the mid-'60's, during the consideration of the Omnibus Crime Control Bill, and after the Long committee hearings of the Subcommittee on Administrative Practices and Procedures had been initiated, we decided as part of our continuing review that we would ban all eavesdropping advertising, too, although up to that date it was not a federal offense. I think the FCC had then recently declared it, from the regulatory standpoint, proscribed in radio communications, but it was not a federal offense, and many states did not so consider eavesdropping.

But we felt it a matter of responsibility, as responsible publishers, and also because of our concern and the public's concern for privacy of communications, we banned eavesdropping and also felt it was appropriate to ban debugging, because those who have a capability, as I mentioned in my statement, to debug, also have the potential to become wiretappers and eavesdroppers.

And it was our experience reflected in our yellow pages, too, over the prior years, that a number of private investigators, for example, advertised that they would both wiretap and debug.

We were fearful, therefore, that by eliminating wiretapping and eavesdropping advertising, the name "deougging" would become a synonym for what we had eliminated, and reflect to those who were looking for someone who was wiretapping an indication that this person had the capability.

MR. HERSHMAN: Has this been challenged in the courts, Mr. Caming?

MR. CAMING: It has. We had a very extensive case in the St. Louis area before the Missouri Public Service Commission, and I believe also it may have gone into court, in which our policies were challenged and expressly upheld by the Missouri Public Service Commission as being in the public interest, and also within our province as publishers. 152 5176

MR. HERSHMAN: Mr. Caming, would you kindly supply the Commission with a letter concerning the details of that case?

MR. CAMING: I can do better than that. I will send you a copy of the decision.

MR. HERSHMAN: I would appreciate that.

[The material referred to follows:]

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MR. CAMING: Yes.

And it has been our general experience that anyone that wants a reliable debugging concern--and it is no reflection upon those in many reputable concerns--can readily obtain it from other sources, such as the local police department or the local Federal Bureau of Investigation, or perhaps the chamber of commerce, who can establish the soundness of the reputations of the firms.

Does that answer your question?

MR. HERSHMAN: Yes, it does.

MR. WESTIN: Mr. Hershman, I'd like to ask a question about that, please.

Just so I understand the framework in which your answer was made, is it your position that you do not accept for advertising in the yellow pages any advertisement which is against public policy, though it is not expressly illegal? For example, would an abortion ad, prior to legalization in the state, have been refused by you and now would it be accepted by you?--so I get some perspective on it.

MR. CAMING: No, Professor Westin. I was addressing myself not to public policy but to the fact that it is our belief that in the very delicate area of privacy of communications, where we, long before it was illegal, banned eavesdropping advertising--you see, it was in December of '66. The Crime Control Act was passed in June of '68. We, on our own, did this and, to insure there was no loophole in the ban against wiretapping and eavesdropping, simultaneously refused to any longer take debugging ads.

MR. WESTIN: Mr problem is sort of a First Amendment one. That is, it sounded to me in the three instances you mentioned--I have no trouble with two of them where you say you don't accept ads for wiretapping and you don't accept ads for electronic eavesdropping. Rather, it is in the debugging one that I have some trouble.

Your assumption, as I listened to it, seemed to be that because some private investigators who advertise debugging services were found through you, or through prosecution that you observed, to be also capable of or offering services, in fact, to engage in wiretapping and electronic eavesdropping, you therefore were making the judgment that you would not accept any advertisement for debugging.

That troubles me a bit because it is making a judgment that all debugging activity is of that character, for the overwhelming majority of persons who would advertise debugging would be of that character--and also because it denies access to a somewhat important publication for business and commercial purposes.

I wonder how comfortable you feel about saying that all debuggers are buggers in disguise.

MR. CAMING: Professor Westin, first, I do not believe that I said that all debuggers are engaging in improper activity. In fact, I tried to carefully reference the fact that almost all debugging firms are probably highly reputable, and there are other means by which one can obtain the name of a reputable firm.

However, we try in our advertising to afford, within the limits of the publication, a certain amount of protection to our reading public. And we have very limited ways or virtually no way to police these advertisements, as you can appreciate. We have, for example, some 23 million listings in the yellow pages, to give you an idea of the magnitude. Accordingly, since the name or the phrase "debugger" in this selective area has often been a synonym, up to today, for those who are also advertising their capabilities of wiretapping and since we could not effectively, you might say, engage in policing, we felt that since we were proscribing any wiretapping or eavesdropping at a time when eavesdropping was not illegal, that we would, as the alter ego of both of those, also eliminate any debugging advertising with a full recognition that there is no impropriety suggested towards any particular firm. And I might say up to today the evidence of the number of cases that have been publicly aired, and some prosecutions--a number of which we have been made aware of--in areas such as private detective agencies and debugging firms -have confirmed that at least in some instances there is this impropriety, and it was just a question of how, with the limited resources at our disposal, could we best follow a policy which we had hoped advantages to some slight degree privacy of communications.

MR. WESTIN: I wish I felt a bit more comfortable about the alternative that you mentioned. For instance, if I were a businessman or political leader or involved in civil rights activity and was concerned that my premises were bugged or my telephone was tapped, I might not feel entirely comfortable in marching down to the FBI or the local police department and asking for a list of preferred firms to check out my lines. It exposes my private business to the government. It puts me in a position of wondering whether the local police department will put me in the hands of a former policeman who is now in the business, which is so often the case--a former wireman for the police department will go into the debugging business.

PROFESSOR BLAKEY: Alan, do you think you could call the security officer in the phone company and ask if he could do it--

MR. CAMING: Or Chambers of Commerce or Better Business Bureaus are very pleased to tell those firms that they can to some extent not only

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vouch for but police. We have often recommended they consult the Better Business Bureau of Chamber of Commerce in the area.

MR. WESTIN: I have a feeling the first thing the Chamber of Commerce would do would be to look in the yellow pages to see who to recommend. These firms are not like General Motors and General Electric. Most of these firms are one-man or two-person operations. As I think of the Better Business Bureau and the Chamber of Commerce, how do they know what is a reliable firm when these are by the nature of things so relatively small. There are some national firms that do this work, Burns or others that we know of, but I just feel troubled by this.

MR. CAMING: Our experience, Professor Westin, has been up to now this has created no problem at all that we have heard of, except from perhaps a few detective agencies that complained about their ads not being acceptable.

We have had no public concern that they are not getting adequate service.

157 5182 Normally, this type of service is sought by businessmen who can generally, through a number of sources, obtain a reliable individual or firm.

We are not in a position to indicate to them in this rather difficult area the reliability of every firm. We do not profess to do that. Nor could we fail to ignore——

MR. WESTIN: If I may interrupt you a moment, I think that is my problem with Professor Blakey's suggestion. If you call the security officer at the telephone company, they'd be put in the position of, as it were, assuring the reliability of the firms they recommend or making some claim or disclaimer, and I think the telephone company would probably feel uncomfortable about selecting competitors in the area as to who they would recommend.

PROFESSOR BLAKEY: Oh, they could give you three or four and let you choose.

MR. CAMING: It is a rather difficult decision, Professor Westin, as you can imagine. We do not do this literally or very often. But we were aware from the very outset of the problem, and decided at that time, which is some seven or eight years ago, to go down that route. And our experience generally has been received salutarily. And as I said, it has been reviewed.

MR. WESTIN: Thank you.

MR. HERSHMAN: Just one further question, Mr. Caming.

158 5183 MR. CAMING: Surely.

MR. HERSHMAN: On Wednesday we had testimony which related some rather serious allegations about employees of Southwestern Bell, specifically employees in the Security Division of Southwestern Bell.

I know that AT0T has done an internal investigation of those charges, and I wonder if you might for the record tell us what your findings have been.

MR. CAMING: I would be very pleased to.

MR. HERSHMAN: Briefly.

[Laughter.]

MR. CAMING: I am just referring to notes, not to all the content of this.

Let me tell you what our position is on allegations made by the police chief and others in the City of Houston.

It has to be recognized that naturally we have limited resources compared to law enforcement with respect to our ability to thoroughly investigate. We do not have subpoena powers. We do not have access to law enforcement files. But we do have a generally capable group, and we have made a thorough investigation to the extent of our resources as one of the steps.

Now, these investigations were not done by personnel within Texas, but we brought in the Southwestern Bell security chief himself, the general security manager, from St. Louis Headquarters. 159 5184

In addition, our AT0T Director of Corporate Security made an independent investigation--again within the frame of our capability--and we have very carefully, because of the gravity of the charges, investigated this.

But secondarily, and perhaps of most significance, we have made repeated requests to Chief Carroll Lynn, to the county prosecutor of Harris County, District Attorney Carroll Vance, who coincidentally--and I have some of the newspaper stories here--has asked Mr. Lynn to produce the charges that he made, as to any proof or any name or any indicia of guilt that we could use to further our investigation.

Of course, we were cooperating fully not only with District Attorney Vance, but we have also contacted the United States attorney.

And I'd like to just briefly read—and it is brief—our contact with the Federal Bureau of Investigation whom we have worked with. This is a letter of December 20 of last year, and I will just quote briefly from it:

"We are especially concerned when such charges include the involvement of telephone company personnel. We find it particularly frustrating when we cannot find any basis for these charges. We take the business of protecting the privacy of telephone service very seriously. If you learn of any information whatever concerning any violations by our employees, we would appreciate hearing from you so

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185 we can take proper disciplinary action, including dismissal.

"Furthermore, it is our policy that any violation of Title III be vigorously prosecuted.

"We shall continue to assist you in every respect in this endeavor."

It is signed by the Security Manager, Southwestern Bell in St. Louis, addressed to the Special Agent in Charge, Houston, Texas.

Now, we made a similar request and have spoken several times to Chief Lynn. We have so far received nothing whatsoever--until recently, this past week for the first time, through the kind offices of the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, we gained access for the first time, not through Mr. Lynn, but through the good graces of Mr. Lehman, the majority counsel, to certain transcripts of officers, several of whom are apparently under indictment, who made certain allegations.

MR. HERSHMAN: The Commission has those transcripts---

MR. CAMING: Pardon me?

MR. HERSHMAN: The Commission has those transcripts available to us.

MR. CAMING: I see. Then that is of particular
161 interest because we had not been able to see this in-
5186 formation before, though we had been repeatedly trying to.

We are getting copies of selected pages which refer to the telephone company, and we intend to launch a further and more detailed examination, including an appropriate examination of the offices involved and any leads on employees that may have been involved.

This investigation will be conducted by AT0T under its Director of Corporate Security, at the behest of our higher management. And it will be, of course, with close coordination of the management of Southwestern Bell.

We also learned a tape of a conversation between Chief Lynn and the Southwestern Bell Security Manager at a luncheon was supposedly so garbled as to be unintelligible. We have contacted at my request Mr. Lehman--in fact, I think it was done yesterday formally--and requested that under proper protective custody that that tape be turned over to our Bell Telephone Laboratories who have extremely sophisticated equipment, in an effort to decipher the tape.

We with to do so because this would permit a determination of the veracity or lack of veracity of the statements made by Chief Lynn with respect to that luncheon, which have been categorically denied by an employee of long standing. And as you can appreciate it, faceless accusations up to now have paralyzed our ability to conclude this phase of our investigation.

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5187 Unfortunately, Mr. Lehman has advised--and I state this, I believe, without any breach of confidence--that the tape was returned as too garbled to Mr. Patterson, J. L. Patterson, who is an apparent associate of Chief Lynn, and Mr. Lehman is going to recommend to Mr. Patterson that under proper auspices the tape or a proper copy thereof be turned over to us for resolution of the matter.

No one is more desirous than the Bell System of insuring that any aberrations are rooted out. But also, we cannot act upon questionable allegations made to the newspapers by gentlemen who, when confronted, say, as they said to County Prosecutor Vance, as quoted in the Houston papers which we checked, and he told us that there is no actual proof. We are following this up very closely, and I can assure you that whatever the result is, we shall act appropriately and fully on it.

MR. HERSHMAN: Thank you.

Mr. Feldman.

MR. FELDMAN: Mr. Caming, I'd like to begin with a preliminary question which I think may help the Commission. You used the term both in your statement and your testimony, "Bell System policy." I wonder if would be able to clarify that term for us without delving into AT0T's corporate structure.

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5188 As I understand it, there are 23 operating companies around the country which provide telephone service, and I wonder to what extent those operating companies are permitted to set their own policies in certain areas and to what extent are they bound by policies determined at AT0T's corporate headquarters.

MR. CAMING: Generally speaking, in the area of security matters, the policy of the Bell System is set by the American Telephone and Telegraph Company after appropriate review and concurrence by the associated companies.

For example, by way of graphic example, when Title III was enacted, we required procedures with respect to how to handle court-ordered wiretap requests. The initial procedures were prepared and carefully reviewed at AT0T and approved up to our highest levels of management. They were then presented to the presidents of each company at a joint conference, or I guess in this case they were sent to them after the conference. And their comments were invited and any suggested changes.

They were received and reviewed, and then the final document was established, and it was sent out as Bell System policy.

In the last analysis, AT0T establishes the policy in conjunction with its associated companies and bears the responsibility for it.

MR. FELDMAN: And does that mean that AT0T has enforcement power?

MR. CAMING: In the sense that all the companies of the Bell System are committed to the strongest possible protection of privacy of communication, there has not been any need for enforcement of policy. I might say, parenthetically, that in all but two companies we have the whole controlling interest stockwise, and in those two companies we have a very substantial shareholder interest.

MR. FELDMAN: As an example, you included in your statement here today, and I know in other forums you have stated, it is Bell System policy that your operating companies do not engage in training law enforcement personnel.

MR. CAMING: I do not believe I said that. I believe I said—and I can understand that long statement—that we do not engage in training law enforcement personnel in methods of wiretapping and eavesdropping. I mean this was my reference.

MR. FELDMAN: Does that mean that it is not against——

MR. CAMING: For example, we would train all of our customers, say, in how to use our PBX's--might give them courses in familiarization with our plant equipment, take them through our traffic departments, sometimes perform instructional surveys for them.

In other words, there are a number of services. But we do not train them to be engaged in wiretapping or eavesdropping.

MR. FELDMAN: All right. Let me be more specific.

Are you aware of at least two incidents which occurred in June of 1970 and April of 1971 that have come to the Commission's attention in which representatives of the Chesapeake and Potomac Telephone Company here in Washington apparently held special training schools for agents of a federal law enforcement agency in general telephone theory?

MR. CAMING: Mr. Feldman, it has been a distinct pleasure to deal with you over a period of time, and you were kind enough to bring this to my attention earlier, and I have reviewed that very carefully.

For a period of a couple of years, starting about 1967 or so and terminating about 1970 or '71, a number of government agency personnel—a few of them were in law enforcement--did participate in a plant familiarization course, the type that we would normally give to basic installers, indoctrination and orientation.

Some, I understand, were in law enforcement. Others were from the Department of State, the FAA, the Department of Highways, District of Columbia.

When that program came to the attention of upper management in the C0P Company in late 1970, it was felt that it should be terminated, for two reasons: One, it didn't appear to be part of our basic responsibility to be doing that; and secondly, it was subject to some misconstruction, particularly in view of our strict policy of not training law enforcement. So that the program was terminated.

To my understanding, it was not a program of other than familiarization with general plant theory.

MR. FELDMAN: So that the record is clear—I don't want to leave any impression there is anything illegal about it——

MR. CAMING: I understand you, but our policy was brought out in a letter by our Director of Corporate Security of AT0T that we do not provide any information to law enforcement except with respect to specific court-ordered wiretapping.

With respect to general techniques and methods, we do not design equipment for wiretapping or eavesdropping, nor do we train them nor assist them in effectuating it.

MR. FELDMAN: Thank you.

MR. CAMING: Thank you, kindly.

MR. FELDMAN: I'd like to ask you a number of questions, turning to a different subject, which have to do with the matter of pen registers.

Now, as the staff has traveled around the country speaking with law enforcement officials and others familiar with the court-ordered system, I think it would be safe to say no single subject has caused more confusion than the matter of pen registers.

Let me begin by asking: Is it correct the term "pen registers" is a generic term which describes a number of different devices which do basically different things but may be used for slightly different purposes?

MR. CAMING: That is correct. A pen register is a generic term, if I may just amplify, for the type of equipment that would record the dialed number. So call them dial impulse recorders—there are various models.

MR. FELDMAN: You do not provide that equipment to law enforcement agencies, though.

MR. CAMING: No, we do not.

MR. FELDMAN: That means if a law enforcement agency wants to use that kind of equipment they must secure it on their own?

MR. CAMING: Yes. This is very commonly available commercial equipment.

MR. FELDMAN: Manufactured by different concerns?

MR. CAMING: A large number of different manufacturers, such as Dimetrics, I think is one.

MR. FELDMAN: There are several manufacturers. The equipment manufactured by these different concerns varies in its sophistication and its nature because it may be used for slightly different purposes? Is that also correct?

MR. CAMING: Well, some have greater capabilities than others as far as the amount of paper recording, dial impulses, and numbers.

MR. FELDMAN: Is it correct that some of these devices commonly referred to as pen registers also have built into them the ability to monitor conversations which are occurring on the line to which the device is attached?

MR. CAMING: I beg your pardon? I missed part of that.

MR. FELDMAN: Is it also true that some of these devices at the more sophisticated end of the spectrum also have the capability, perhaps if another set of earphones were to be attached, to monitor conversations which are occurring on that line?

MR. CAMING: Yes, and that is the subject of our concern. It is not so much that they have the capability but all you have to do is insert a jack in a large number of them and attach a tape recorder.

MR. FELDMAN: Or a set of earphones?

MR. CAMING: I am not sure about that aspect without some way of overhearing the voice. But it might just be earphones. But certainly you can, by plugging in, have the capability of overhearing the voice conversation.

MR. FELDMAN: Does the Bell System have a uniform policy———

MR. CAMING: I might say that not all pen registers have that capability. A number of sophisticated models do.

MR. FELDMAN: Does the Bell System have a uniform policy in regard to the nature of legal process which is required before the information which would allow a pen register to be hooked up is provided?

MR. CAMING: Yes. We have very crystal-clear policies which have been reduced to writing.

For example, on April 30, 1975, a communication to all Bell System security managers and also security counsel—and in each company we have a security counsel as a member of the Legal Department of the particular company who comes under my general oversight in this area—restated the recommendation that private-line facilities not be furnished to federal law enforcement authorities acting under non-Title III court orders, for use in connection with a court-authorized pen register.

Cable and pair and multiple record appearance record information are only to be released subject to due process, such as lawful court orders. And we state it's our unequivocal policy to adhere to the fact that in a non-Title III situation, assuming arguendo the validity of the use of a pen register by law enforcement authority—very often federal authorities proceed under Rule 41(b) of the Federal Rules of Criminal Procedure—assuming that validity, we feel, first, that as a matter of policy and our concern for providing assistance in only those situations where Title III safeguards are written in, and as prescribed by Congress, or in adequate security situations, that we should not provide a private line which has a potential for other use.

That is our general policy, and one which we have endeavored to adhere to, and we have litigated several times, twice to the Fifth Circuit now.

MR. FELDMAN: But the question is: Exactly what type of process is necessary? I know from experience we have found a variety of different methods by which law enforcement seeks pen register information. Sometimes it is in the form of a subpoena, sometimes in the form of a Rule 41 type search warrant. Other times they go in and get something hybrid in the nature of the Title III. And there is a great deal of confusion.

MR. CAMING: That is one of the points that is, of course, confusing to us, because we feel that it is for the Congress to determine this question as to the extent to which a pen register can be used in law enforcement activity. And we take no position against such use and recognize it as a useful tool, both for strategic information and perhaps obtaining probable cause for ensuing Title III orders.

The only question is: Should we voluntarily, with also incipient civil liability—and we have been sued in a number of cases on other matters—undertake to provide, in addition to cable and pair, which we do have to provide as business record information, but we only provide it under subpoena duces tecum of a court or grand jury—we do not recognize an administrative summons—in addition to that whether we should also provide a special private line, not the one that you would get if you took an office and wanted to interconnect to your office down at headquarters, where you would go in and get a normal private line or normal telephone service—but one that goes to the terminal.

And it is a difficult decision but our overriding concern is for privacy of communications and the fact that if we assisted the federal authorities we would be subjected to the same requirements from every local and state judge throughout this country.

And, accordingly, we felt that our responsibility as a regulated common carrier dictated that we act conservatively in this area as we do in so many others.

MR. FELDMAN: Thank you.

I'd like to explore several other areas where there is some confusion, and perhaps you can assist the Commission in clearing it up.

You include in your statement some information about toll revenues, toll bill information.

MR. CAMING: Yes.

MR. FELDMAN: The only question I have in this area is this: In one locality on the West Coast the staff has been advised by law enforcement officials that subscribers are given the option of asking the telephone company that their toll records not be retained except for the very short period of time for which they are necessary after billings—I guess something less than 30 days. And this has, at least in one instance that the staff is aware of, thwarted law enforcement efforts to subpoena these toll records.

Is this a policy in any of your operating companies?

MR. CAMING: I am afraid, although I am not certain of the company and even whether it is a Bell System company—it appears to contravene the requirements of the Federal Communications Commission System of Accounting which requires us to retain, as a minimum, all toll billing records for a period of six months. And we uniformly do it throughout the Bell System. On occasion, we have kept them longer, if, for example, law enforcement has asked in a specific case that we retain them. But to my knowledge, we do not destroy any prior thereto. You would offend federal regulations and presumably intrastate regulatory recommendations.

MR. FELDMAN: Thank you. On the question of subscriber information, where they have a wiretap, a pen register or similar device and keep on a day-to-day basis a list of every outgoing call made—they have nothing other than the telephone number—does the Bell System have a policy on providing subscriber information to law enforcement officials based on those kinds of records?

MR. CAMING: If I understand you correctly, when law enforcement is acting under a Title III court order and presumably we are providing information and facilities as provided by the court directive, part of that would be such business records relating to the subject of the order as law enforcement would require, including the names and addresses of any telephone numbers identified. That would be part of what has been rather uniformly construed, in the sense that it hasn't been challenged in the court, the provision of information in connection with facilitating wiretaps.

MR. FELDMAN: The last area in this phase that I'd like to ask you about is something which is known most commonly as a call forwarding system, which I understand is a relatively recent development of the Bell System. As I understand it, it is a service which you provide to subscribers by which a person who desires to be able to forward calls or receive calls at a location other than his home or office, with the proper equipment can simply dial on his home telephone the number to which he wishes calls forwarded, and then through computerized equipment in your central office any numbers which ordinarily would be coming in to his telephone would be automatically diverted to the number that he has requested.

Now, the concern that we have found among law enforcement officials—and they may not be correct in their understanding of the technical aspects of it—but their concern is that if this were put on a telephone and a Title III court-ordered wiretap was placed on that phone, that if the individual diverted his call to some other number, that would circumvent the wiretap. Is that correct?

MR. CAMING: Yes. And if I may just very briefly explain, call forwarding is a feature a subscriber may obtain as an option. It is not available as yet throughout the United States but is in a number of locations.

When call forwarding is provided, it is usually in conjunction with an electronic switching system office, E.E.S. office, which is more computer controlled.

Now, the call forwarding feature is in the computer, and the subscriber has the capability, when he is leaving, to forward his calls by certain dialing arrangements to another telephone number.

When he does that—and let's say it is my number and I am going to visit you, Mr. Feldman. I would dial your number and, in effect, tell the computer, "Any calls to my number are to be diverted."

Now, they will come into the E.E.S. central office and will immediately go to you. They won't go to my phone. So that if you were overhearing calls on my telephone, you would not be hearing any calls coming in during that period.

The party could still, if anyone was at home, make outgoing calls.

In that case, we do provide certain assistance to law enforcement when they request it. We don't automatically know—we don't have any way of knowing without a laborious process what number it has been forwarded to. But we can tell law enforcement whether or not there is a call forwarding feature which the subscriber has. And then the law enforcement could request us, by serving an appropriate order or subpoena, to advise them at that time what number that call has been diverted to.

This would require us to literally search the computer with a very specialized craftsman, who would go into the "call" store area of the computer and search, and it could take from a few minutes up to 35, 40 minutes from experience, and the employee can find that particular number. And then we would be glad to provide that information under proper auspices.

Now, I think it is fair to say that we would not be in a position to assist, without a further court order, on providing assistance to the number to which the call has been diverted. The reason for that is that this would necessitate all calls to that number, not only by the person who diverted calls there, but everybody else's calls to that number would also be intercepted, and we would have to have a court order to relate to that.

But should we get a court order that would relate to that particular number, we would accord the same assistance as we would to the so-called home number.

Now, the way those numbers are changed might be of interest to you very briefly.

The party must come back to his home to change that call diversion—or someone else at his home could do that. And when he does that, that erases the call. We don't have a record.

In other words, if you ask me: What were all the numbers called within the past three months that Professor Blakey's phone may have diverted, we could not tell you. At most we could tell you perhaps one back, but the others are automatically erased.

Does that answer your question?

MR. FELDMAN: Yes, it does. The concern at this moment is that as a practical matter law enforcement would have a difficult time securing court orders quickly enough to overcome that difficulty, particularly if the individual was frequently changing the number to which the calls were to be diverted, which I guess someone probably would if they were attempting to circumvent a wiretap.

PROFESSOR BLAKEY: We will take a five-minute break at this time.

[Whereupon, a short recess was taken.]

MR. STEIN: Mr. Chairman, may I interject for a couple of questions?

MR. BLAKEY: Mr. Stein.

MR. STEIN: Chief Andersen of our Commission, unfortunately, had to leave early and asked me to ask these questions on his behalf. They concern the telephone company's cooperation with local law enforcement authorities on court-ordered wiretaps.

We found some degree of variance in the Bell System as to the degree of cooperation in furnishing leased lines, for instance, between New York and New Jersey. New Jersey authorities find their cooperation from the telephone company much better than, say, New York City authorities, although both of them have court orders.

Can you explain the variance in telephone company policy there?

MR. CAMING: Yes, Mr. Stein.

I might say, by the way, that I have personally heard nothing but the utmost commendation about cooperation in New York. Mr. Miller, the Security Manager, has been very highly regarded by both local and federal authorities.

I think it is just a question of perhaps definition as to what we are talking about by degree of cooperation.

Both companies accord the same cooperation, and the methods employed may vary with the individuals, but not in the approach to the subject. The idea is to do everything possible to effectuate a particular wiretap as effectively and as swiftly as possible.

To give you an example, when law enforcement might advise in New York City, just taking this hypothetically, that they would require a private line—the federal authorities—between Point A and Point B roughly, that they anticipate getting a court order, say, within six or seven days, New York Telephone Company would when provided the location of the listening post in the suspect's terminal begin the necessary preliminary steps.

As you know, these private lines very often, particularly when they go through more than one central office, have to be specially engineered. You may need a wider gauge cable. You may need what they call long-line sets to make sure the transmission is maintained at a proper quality so the interjection of the line does not indicate an aberration to the parties to the conversation.

All these measures and special engineering may take, say, a week to do.

New York Telephone will normally initiate such measures and when the order comes in they will either go along or, if they have finished it, be prepared to activate the line and turn it over to the authorities as soon as possible. So they do everything possible.

A lot, too, depends on the facilities, the geography, whether you are dealing with Summit, New Jersey, where I live, or New York City, where you have quite a few different problems.

MR. STEIN: The issue seems to be on private-line channels which are much more difficult to get for New York City police officers than for New Jersey officials, so that New York officers sit in basements, whereas New Jersey officers can get the wires into their normal offices.

MR. CAMING: To a degree there it depends on facilities. We endeavor to make it uniform, and if there are any special problems in a particular area, normally they can be ironed out with the particular local authorities. And, of course, we are always pleased to entertain any problem areas that any authorities might present.

I, for example, know that our Director of Corporate Security maintains very close contact with all the companies. So if there is any way we can review a situation with a particular company, we are always pleased to do so.

MR. STEIN: Why the distinction between furnishing private-line channels and furnishing of all other sorts of information, such as cables and pairs?

MR. CAMING: It is our policy to provide that information necessary to effectuate the wiretap, but to provide the minimum assistance. And unless it is an area like the federal area, and the District of Columbia and eight states have a directive provision, we do not provide a private line in the first instance. And we only provide line access information, and then only such additional assistance as a particular case may necessitate to effectuate the specific wiretap.

And the reason, in part, is that it is the prerogative of the Congress or the state legislature to determine the degree of assistance they wish provided. And in a number of states they have rejected the so-called court-directive provision and refused to put it in their law.

Now, we do have two policies. I hope you will understand. That is set forth in our statement. When there is a court directive, we do provide a private line in the first instance. When there is not, we provide only line access information.

And there, again, there is a question of the degree of cooperation necessary to effectuate the particular tap.

We do ensure in each case that sufficient cooperation is extended—but no more. And we do not do it on the basis of convenience or law enforcement, but rather upon our top management tripartite decision--legal, security, and operations—as to whether the type of facility and operations require more assistance.

But when there is a court directive--New Jersey has a court directive provision pending. I thought the law had been passed but it has been recalled.

When that law is obtained, we will then provide assistance as above described when and if we receive a state court "directive"--now, New York rejected several times, although it has been before their legislature, the court-directive provision.

So we cannot, we feel, in a sense go beyond what the state legislature wishes to be accorded to its law enforcement officers.

MR. STEIN: But the purpose of effectuating the wiretap makes little difference after they are furnished these private-line channels. The difference is the comfort and the ability of the police to check themselves on the ability to wiretap. They can't ability of the police to check themselves on the ability to wiretap. They can't wiretap from basements. But why this distinction as to furnishing private lines?

MR. CAMING: Well, our point is to provide the minimum assistance, in view of the fact that our basic responsibility is not to be in law enforcement but to be common carriers responsible for provision of service and privacy of service. We have a very dual responsibility. And we feel we should do what is necessary in the concept of the legislature to carry out the legislative mandate. But we are very conservative in going beyond that.

But we do in each case take all measures necessary to ensure that the particular wiretap is effectuated.

MR. WESTIN: May I ask a question about that, please, on the same line. Suppose that Congress or the states in its legislation were to provide as a requirement that the telephone company, when a court order was obtained, provide a direct line; that it be to a secured place; and that all listening on the telephone that was not conducted at the central place would be unlawful, thus providing an opportunity for centralized listening, perhaps providing more control over amateur, illegal, beyond-the-border-of-authority, wiretapping.

Would you have a reaction to that as a potential for policing lawful court-ordered wiretapping more effectively than when it is done in a variety of basements, attics, rented motel rooms, et cetera?

MR. CAMING: Professor Westin, I feel that law enforcement generally in our experience has scrupulously observed the requirements of Title III, and that probably would make little difference. I think the problem of illegal wiretapping is not in any sense interfacing with where the wiretapping takes place, but the character of the people who are doing it.

And I submit it would be even easier and perhaps more dangerous to have a centralized Oposition which could, in a certain sense, almost have unrestricted access to the lines of a city.

In a particular wiretap, we provide certain minimal assistance, but at the actual access to the premises where it is done, the actual wiretap itself is done by law enforcement.

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And I think the idea is well-taken that if you did have a centralized place you might be able to have closer supervision. We, for example, find that in service observing locations we foster and favor centralization. On the other hand, many people would be concerned about the creation of a wiretap center that dominates the city. You have seen that in newspaper articles.

MR. WESTIN: I have had some experiences as you have with the descriptions perhaps being broader than they may have been or than the situation would really justify. Have you ever thought about why creating a center would, not in terms of newspaper stories but in fact, create great problems? That is, if every connection that went into the center had to be verified and if at any point on a sporadic check basis you would be able to ascertain that at the center only authorized court-ordered taps were being fed in, you don't really have the image of a switchboard plugging in anyplace in a city.

MR. CAMING: That is true, but we do not police the wiretaps, as you can appreciate. We provide the facilities. The actual tapping and supervision of tapping is done under the auspices of the court. We do not access their premises. So we would actually not know the uses to which the equipment was put once it was in. All we would know, of course—and we know that to the same extent wherever the location—we assure ourselves that it is a court order valid on its face. And what happens to it and whether it is abused or not, or transcends the bounds, is something we do not know, since that is the province of the courts.

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MR. WESTIN: What I am trying to suggest is just for the purpose of exploration—and I am not committed to this as a suggestion, but it seems to me something that we as a Commission ought to be discussing at a hearing like this with a telephone company. As it is now, law enforcement officials go into the basement, say, of an apartment building or office building. You give them the pair numbers, and what they do down there you don't know. In much popular writing, the idea is in the wee hours of the morning when things get boring, some law enforcement officials might listen to some other apartment, some other office. There is the sense that once they are there at the box where all the pairs come, nobody is watching to see what they do.

Supposing for the minute that takes place—how much I am not trying to estimate here—the alternative I am raising with you is that if you gave one connection from the pair that was given court-ordered authority to eavesdrop into a listening post, wouldn't you be able to insure only that line was the line being listened to because there would be no other pairs given access to law enforcement, and wouldn't that provide far greater security against random listening to unauthorized telephones than the present highly decentralized, unsupervised, unmonitored technique of electronic eavesdropping?

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MR. CAMING: I would certainly say that if we provided facilities to a centralized listening post, we'll say, for each city—and I presume for each authority within the city, since you have a number of law enforcement authorities—that from our standpoint it would certainly be no more difficult. And if, in the viewpoint of the legislature and the Commission that was a desirable location from which to have law enforcement operate, I would preliminarily, subject to any operating considerations of our people—I would see no objection to our providing lines to that location.

We provide facilities to whatever location is designated. And if, in the wisdom of the Commission and the Congress it appeared to be more appropriate on balance in their experience, we would see no objection.

MR. WESTIN: I would appreciate it, after having a chance to reflect on it and perhaps talk it over with others in the telephone company, if you wanted to amplify your reaction to this you could submit something to us. Because it seems to me when you started out you identified law enforcement sites wherever located, not supervised, as broadly the right way to go. Then as our discussion has gone on———

MR. CAMING: We would still not supervise in any respect. What I am saying to you———

MR. WESTIN: By supervision all I mean is what I said before, that you'd put only the one line that was court-identified into that room.

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MR. CAMING: This, of course, is a question of the facilities, too. I am assuming that if it was the desire of the Congress—of course, it could be more expensive for law enforcement, and that would be for them to determine. For example, if everything ran to one point, it might be more expensive facilitywise than being very close to the line of operation, for two reasons: One, the length of the facility and the special engineering might require us to impose larger charges in a particular case. That could, of course, balance out on an average.

Secondly, at times they may want the listening post for other purposes like physical surveillance, in closer proximity.

But certainly we could provide those facilities, as we do now, to any central point. It really makes no difference to us. The question of policing each case is done by us to the extent of very carefully determining the validity of the order, and of insuring that

our facilities comport with the order. Beyond that, it is the province of the court.

So I could not pass upon the question as to whether one site is more desirable than the other. It is really between law enforcement and the legislative authorities.

MR. WESTIN: Thank you.

187 212 MR. STEIN: We have noted in our travels the degree of willingness among subsidiary companies of the Bell System to provide those private-line channels does vary, and also, for what it's worth to you, some of your rival companies like Rochester Telephone Company have no hesitation, despite the lack of directive of New York State, of providing these facilities to the police.

A related issue that Chief Andersen wanted to raise was the telephone company definition of what constitutes a court order valid on its face. We have heard from an assistant D.A. in Arizona and we know it is also true in the State of Colorado that telephone company practice there is to scrutinize a signed order that has already been scrutinized by the D.A. and signed by a judge of competent jurisdiction. Nevertheless, it is scrutinized and sometimes held up or refused to be acted upon by the telephone company.

MR. CAMING: I am familiar with that episode.

What we do is recognize what is the desire of the Congress and the states that law enforcement act only under orders that are valid. And this order is not only protective to us and the public but also to law enforcement because a prosecution predicated upon a faulty order would be deficient.

Accordingly, in the one case or two to which you have reference, the orders were actually defective on their face and all that was pointed out was that the order needed correction, and it was corrected and assistance was promptly provided.

188 213 We do scrutinize it because we feel it is the intert of the Congress and of the state legislatures that we do not cooperate except when the order is valid on its face. We do not endeavor to go behind the order. We never ask about it afterwards for the supporting evidence. But if an order is void on its face, I do not see how we can cooperate.

MR. STEIN: The question was the interpretation of the state law by which the D.A. and the judge's interpretation of the state law varied from the telephone companies—at least in the Arizona situation.

MR. CAMING: In that instance, I am certain the judge would have apprised us of the propriety of the order. And I do not fault our people if there is any doubt of having our lawyers request the court to review the order if they have an objection. I think it is for the benefit of the public and for the benefit of law enforcement to insure that the orders appear valid.

If there is a defect question of that type, which may be an erroneous interpretation on our part, once it is clarified, is clarified in perpetuity. So this problem you referred to, once ironed out, was no longer a problem.

But we do try to accord the utmost accommodation to law enforcement and act as expeditiously as possible whenever we are confronted with a situation of this type.

MR. STEIN: Thank you.

189 5214 MR. FELDMAN: Mr. Caming, the rest of my questions have to do with the subject of electronic toll fraud, and we have three other witnesses who are going to add some testimony to that as well. So I think in view of Professor Blakey's requirement that the next witness testify———

PROFESSOR BLAKEY: The procedure we will follow is when Mr. Caming is finished, at this point we will temporarily relieve him and put on Mr. Linehan, and when he is finished we will bring up the other gentlemen to discuss the general subject of monitoring and ask Mr. Caming to come back. But I understand Commissioner Westin has one or two questions of Mr. Caming.

MR. WESTIN: My questions do not relate to the matters that are going to be taken up by other witnesses. One is a question of legislative amendment.

Do you feel that Title III needs any amendments in order to specifically protect the privacy of data communication on telephone lines? This is an area I worked in in the computer privacy field, and it can be argued that apart from the protection of business proprietary information and fraud suits, we lack in the United States a generalized protection by statute of privacy of confidential personal information—not by voice—when it travels across the telephone lines, and that we have some gap here in terms of what kind of federal express protection of such data, criminal penalties about attempting to intrude into the movement of confidential personal data by leased-line data communication, and so on. 190 5215

Have you thought about that and do you have any recommendations to give us?

MR. CAMING: Yes, I have given a lot of thought to this subject, and this is one Professor Blakey and I have discussed in the past, and I have expressed concern as to the interpretation of the phrase "aural acquisition."

There are two approaches—and I say this because we have the current statute which we are living with.

It could be argued that aural acquisition means the acquisition of the electric signals going over a wire communication.

It must be recognized that voice and data are really electric signals demodulated to, in one case, the level of frequency that we can recognize by the ear, and in the case of data, that can be seized upon by the computer and acted upon.

And in that sense, the aural acquisition is the same. You are not taking voice or you are not taking data. You are taking electric signals, and then you have to convert them and process them.

So in that sense, I would hope that the present prohibitions of Title III would extend to that.

On the other hand, search of the legislative history reveals little or no real concentration in this area. Rather, they were talking about interception of voice conversations. And my concerns, which I mentioned to Mr. Reynolds, of the Department of Justice, as to whether he had any suggestions—and, of course, Mr. Reynolds is speaking only in a certain area of the department—this is one of the concerns, because not only in private business but much of the criminal justice network is data. And if criminals could, with impunity, intercept, it would certainly be a state of affairs that would be alarming.

In addition, it would raise questions of industrial privacy. And, of course, today the computer is vital to segments of government and industry.

So my answer is: As a lawyer faced with the existing statute, I would firmly state without equivocation that a strong argument can well be made that Title III applies. But I am concerned as to whether that argument would be acceptable to a court after really scrutinizing the congressional background.

MR. WESTIN: Without knowing what our Commission might conclude as a corporate body, I think we should seriously consider an amendment that would extend the protection of private communication by data through congressional action.

In that regard, would you be willing to put your mind to drafting for us, as a suggested line of approach, what kind of provisions you think might be considered by this Commission for recommendation to Congress that would extend the proper kind of protection to data communication?

For example, you may be familiar with the fact that Sweden passed a data protection act in 1973, and protection is not given to just the storage of data in computer banks but also the transmission. It might be worth looking at that but I am sure you might have other ideas than just imitating the Swedish model. If you could write a nice, strong amendment that would give protection—I am not so much concerned with the industrial and proprietary information, but so much of the personal data dealing with people's medical records, dealing with information about welfare and other non-law enforcement information, is increasingly being transmitted by data communication, and there are high vulnerabilities for extraordinarily important private personal information collected by government, and in the credit and insurance fields collected by private industry.

And I would welcome having your thoughts on this so we can consider it when we turn to possible amendments.

MR. CAMING: I will be very pleased to endeavor to put something on paper.

MR. WESTIN: Thank you. I wonder if you could say a word on the subject I don't think your statement addressed, the question of the way the telephone answering service, as it has developed over the last few years, may open some vulnerabilities for private communication.

What I have in mind is this. We have had it described to us in several communications to the Commission that the creation of telephone answering services means there are now people in each city who are able to pick up on individual telephones of persons who subscribe to their services after the required number of rings and answer the telephone; and that this is accomplished through means that I am sure you could describe more specifically, of a connection in the telephone machinery itself, a link between the telephone number of a subscriber and the telephone answering service.

That raises in my mind the question of who is now engaging in the business of telephone answering services. What verification is made of the fact that my telephone is now connected to a telephone answering service? And what kind of abuses may be taking place?

I have had brought to my attention accusations that because these are relatively small-scale operations, not national companies that seem to be doing it, a good way of conducting business espionage is to form your own telephone answering service or corrupt one from inside and get the ability to listen in to the telephone conversations of persons who use telephone subscription services.

I wonder if you could say a word about this in general and give us your thinking on it?

MR. CAMING: We are somewhat familiar with the problem because it was voiced, if I remember, during the hearings before Senator Long's committee back in the mid-'60's—the telephone answering service. If my memory is right, a locksmith from the Washington, D.C., area testified on that very subject.

We have a procedure which hopefully eliminates much of that danger, which is uniformly applied throughout the system.

We do not provide telephone answering hookups, which are in effect an extension but off-premises, just as you would have in your house, but it is theoretically extended to the Telephone Answering Service Bureau, except as follows: we require the express consent of the subscriber before we will act upon any such request and make the installation.

MR. WESTIN: How is the express consent acquired?

MR. CAMING: In writing—by the subscriber, authorizing us to give the telephone answering service physical access to his line for the purpose of answering the phone.

MR. WESTIN: Do you have a verification procedure to see whether the signature on a piece of paper is, in fact, that of the person who is subscriber to the telephone?

MR. CAMING: We do have verification procedures.

MR. WESTIN: For example, would you call the telephone?

MR. CAMING: We do not take it over the telephone. We require written consent. We usually contact the subscriber who desires the services and inquire from him, and ask him to send in——

MR. WESTIN: Do you do this by going personally to the subscriber with a representative of the telephone company and talking directly to the representative or the subscriber? Or is this done by receiving a sheet of paper, a form that has been signed at the bottom, and calling that number and saying, "We have received this number. Are you Mr. Jones of 2222 North Avenue, and did you sign this?"

How do you verify it?

MR. CAMING: Normally, we would verify it by getting a request orally or in writing, first from the telephone answering service, to provide this. And I would have to recheck this and any of my remarks would be subject to modification.

But I believe that we then verify it with the subscriber himself.

Now, if the telephone answering service brings in the subscriber's request—whether we'd go through a further verification procedure in the apparent absence of any irregularity would depend on the circumstances. But we do have established verification procedures. And we are careful because we have recognized, particularly since Senator Long's investigation, the problem. And we look at this very carefully and attempt to police it.

MR. WESTIN: On the other hand, do you have any procedure for investigating a telephone answering service? Can anybody come to you and say, "I am the Ace Telephone Answering Company and we are now in the business of picking up"——

MR. CAMING: We would assure ourselves that it is a legitimate concern, but what it does besides telephone answering would be difficult for us to do. Once the subscriber has consented and it is verified, the telephone answering service, absent any proof of irregularity, would be assumed to be reputable—just as any of our other customers would be. It would be very difficult for us to endeavor to investigate.

I might point out that when the telephone answering service intercepts, it does not have the capability of overhearing silently, as I understand it. In other words, suppose you were on the line. The telephone answering service could not silently get on and listen to your conversation even if you were subjected to their service. And if you answer the phone first, I think you disconnect the service so even the potential for overhearing is omitted.

MR. WESTIN: That was not my understanding, but I would appreciate your verifying that statement.

MR. CAMING: As soon as we have the transcript on this, I will review this with our people in Commercial, and I am sure that anything that more accurately reflects our practices will be brought to the full attention of the Commission.

MR. WESTIN: Thank you.

PROFESSOR BLAKEY: I have only one further question at this time. I wonder if you would review for the Commission briefly the development and present status of the phone company's policy on what information it provides to a subscriber where, having been asked to check the line, it determines that a device which is known to have an outstanding court order is present.

MR. CAMING: In other words, a non-court-ordered device?

PROFESSOR BLAKEY: No. My question is, say a member of organized crime requests the phone company to check his phone to see if there is a wiretap on it. You check it and, lo and behold, the Federal Bureau of Investigation is there with a court order. What do you tell the member of organized crime?

MR. CAMING: Our practice generally——

PROFESSOR BLAKEY: As you well know, Mr. Caming, I know the answer to that question. What I really want to get in the record is the development as well as the present status of the policy.

MR. CAMING: I'd be very pleased to initiate this conversation.

It is our general and recommended practice that when we find a device, whether legal or illegal—legal being under court order and we are aware of it—that we would notify the customer that we have found a device—we use that term without

characterization. And if he has any questions whatsoever, go to local law enforcement, or go to law enforcement.

We use the generic term "a device" in order not to disclose what it might be.

Second, there are two companies at present that have an express policy, one by statute, Minnesota and New Jersey by company practice, of advising the customer that, "we will be pleased to check your line, and if we find an unauthorized device we will advise you." And in that case, if they find an authorized device, they report back to the customer, "we have checked your line and found no unauthorized device."

And if the customer asks, as is probably his wont, "What about an authorized device?" we just state, "We do not disclose that information. However, Title III provides that the court issuing any lawful court order is required by law within 90 days after termination of the order, unless it is postponed for good cause, to advise you, and so you will be advised if there is such."

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Now, there have also been some cases where we have received in other states court orders directing us not to disclose the presence of a device. In such cases, we have adhered to that order.

That has generally been our practice.

PROFESSOR BLAKEY: And what do you tell the subscriber? We have a court order that tells us not to tell you anything?

MR. CAMING: No, in that case we go into what is known as the unauthorized device approach. We will just tell the subscriber. "We will check your line, and if we find an unauthorized device, we will let you know."

PROFESSOR BLAKEY: Was there a period of time in which the general policy of the phone company was to make the , "We found no unauthorized device" statement?

MR CAMING: You mean the so-called New Jersey approach?

PROFESSOR BLAKEY: Yes, sir.

MR. CAMING: No, I don't think there was ever a time when that was a general policy. It was a question for a period at the outset of Title III as to what approach should be used.

PROFESSOR BLAKEY: What was the experience with the initial statement to the subscriber that, "There are no unauthorized devices?"

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MR. CAMING: That would take us up to today.

MR. CAMING: First of all, two things have to be borne in mind.

First, we have found virtually no lawful devices over the years. We have found a few but virtually none. Out of the 1400 you could probably count a handful.

Second, members of organized crime, for some reason which is probably well-known to us, do not come to us and ask us to check—with rare exceptions. There may be an instance where they may discover a device and then ask. We had one recently in an eastern state where they called the telephone company, and a craftsman came out and the subscriber said, "What is that?" And "that" happened to be a device on his set.

And he was interested in what we would do with it, and we said, "We are just going to turn it over to law enforcement. If you have any questions about it, ask them. We don't know what it is."

We didn't, at the time.

The only point I must bring to the Commission's attention—two points.

We are very troubled by this question, as you can appreciate, because the last thing we want to do is in any sense undermine the lawful device situation. But we have some 10,000 or more requests a year. There are only a handful of devices found by each company. You tell the others, "We haven't found an unauthorized device," and they get all upset and they say, "What about an authorized device?" 201 5226

And we say, "We can't tell you about this."

And they all go away saying, "Aha, there is an authorized device on our line."

And it has been our experience that this so often happens, and mainly these are innocent people getting very, very upset.

PROFESSOR BLAKEY: Would you ever tell law enforcement to remove it and, having removed it, go back and tell the subscriber, "There is no device on your line?"

MR. CAMING: At one point in a number of companies they did use that route. The one difficulty we found with that is it raised questions as to what our credibility would be when coming before the National Wiretap Commission or Congress or the state legislature and our subscribers as to whether or not this would be thought to be deception if the day after it was removed law enforcement put it back on again, and then it came out in a prosecution and the thing would be labeled as deception by the telephone company.

We feel the one thing we do not want to do and that we cannot do in good faith to our customers is lie.

And the statute does not prohibit disclosure of a device. If it did, then we could point to the statute and say, "That is the situation," and Congress would have to weigh that against the fact that a great many people are going to get lawfully upset innocently. 202 5227

And we nave had the amusing situation where courts have said to us, "Don't lie to the customer, but don't tell them there is a device on the line."

And we said, "Well, splendid. Would you like to talk to them? Because we haven't figured out that third route."

PROFESSOR BLAKEY: What we obviously need at this point is a Jesuit scholar.

MR. WESTIN: The trouble is the Nixon Administration has made "inoperative" such a bad term. You could go behind that and suggest the statement may or may not be true. It is operative for a certain period of time and inoperative as of a certain date.

MR. CAMING: Yes. Well, we have thought, for example, of a number of things. In fact, I have explored it with law enforcement authorities, and the Department of Justice, and importuned them to come up with any better method, and they themselves have recognized that this is a Gordian knot.

PROFESSOR BLAKEY: Thank you, Mr. Caming.

I wonder if you could step down for a short period while Mr. Linehan testifies.

[Whereupon, Mr. Caming was temporarily excused.]

[The prepared statement of Mr. Caming and additional materials follow:]

[The prepared statement of Mr. Caming and additional materials

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STATEMENT OF H. W. WILLIAM CAMING, ATTORNEY, AMERICAN TEPHONE AND TELEGRAPH COMPANY

I am H. W. William Caming, Attorney in the General Departments of American Telephone and Telegraph Company. My areas of primary responsibility have since 1965 included, from a legal standpoint, oversight of matters pertaining to industrial security and privacy as they affect the Bell System.

I wish to thank the Commission for the opportunity to present the views of the Bell System on privacy of communications and delineate our policies, practices and experiences with respect to electronic surveillance, principally in the area of wiretapping, the disclosure of toll billing record information, and electronic toll fraud.

I

At the outset, I wish to stress the singular importance the Bell System has always placed upon preserving the privacy of telephone communications. Such privacy is a basic concept in our business. We believe that our customers have an inherent right to feel that they can use the telephone with the same degree of privacy they enjoy when talking face to face. Any undermining of this confidence would seriously impair the usefulness and value of telephone communications.

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Over the years, the Bell System has repeatedly urged that full protection be accorded to its customers' privacy, and we have consistently endorsed legislation that would make wiretapping as such illegal. In 1966 and again in 1967, we testified to this effect before the Senate Subcommittee on Administrative Practice and Procedure during its consideration of the Federal Omnibus Crime Control and Safe Streets Bill. We said we strongly opposed any invasion of the privacy of communications by wiretapping and accordingly welcomed Federal and State legislation which would strengthen such privacy. This is still of course our position, one which we have reiterated in recent years in appearances, among others, before various subcommittees of the Congress.

We believe that the Federal Omnibus Crime Control Act has contributed significantly to protecting privacy by, among others, clarifying existing law and proscribing under pain of heavy criminal penalty any unauthorized interception or disclosure or use of a wire communication.

During our Congressional testimony, we have said too that we recognize that national security and organized racketeering are matters of grave concern to the government and to all of us as responsible citizens. The extent to which privacy of communications should yield and where the line between privacy and police powers should be drawn in the public interest are matters of national public policy, to be determined by the Congress upon a proper balancing of the individual and societal considerations.

For more than three decades, it has been Bell System policy to refuse to accept in the Yellow Pages of its telephone directories advertisements by private detective agencies and others, stating or implying that the services being offered include the use of wiretapping. In December 1966, during Congressional consideration of the Federal Omnibus Crime Control Act's Title III proscriptions against unauthorized interceptions, this longstanding policy was expanded to prohibit too the acceptance of eavesdropping copy. This standard, adopted by all Bell System Companies, was interpreted from the outset to make equally unacceptable so-called debugging advertising (*i.e.*, advertising stating or implying electronic devices or services will be provided for the detection and removal of wiretaps and eavesdropping "bugs"), on the theory that those who can debug also possess the capability to bug and wiretap.

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Our Companies continually review their Yellow Pages in an endeavor to ensure all unacceptable copy is removed, either by satisfactory rewording or deletion of the offending copy. New advertising is subject to similar scrutiny. The scope of this undertaking becomes apparent from the fact that there are approximately 2,300 Yellow Pages telephone directories, containing some 23,000,000 advertisements and listings.

The removal of unacceptable copy is a never-ending task, since many such advertisements are revised, and new ones appear, in each issue. We believe, however, that we have done a creditable job in this area, and we intend to continue such rigid policing as contributive to maximizing privacy of communications.

It may help place matters in perspective if we provide a brief insight into the magnitude of telephone calling that occurs in this country in a single year. During the calendar year 1974, for example, there were approximately 144 million telephones (including extensions) in use in the United States, from which more than 200 billion calls were completed.

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From the time our business began almost 100 years ago, the American public has understood that their telephone service was being personally furnished by switchboard operators, telephone installers and central office repairmen who, in the performance of their duties of completing calls, installing phones and maintaining equipment, must of necessity have access to customers' lines to carry out their normal job functions. We have always recognized this and have worked hard and effectively to ensure that unwarranted intrusions on customers' telephone conversations do not occur. We are confident that we have done and are doing an excellent job in preserving privacy in telephone communication.

The advance of telephone technology has in itself produced an increasing measure of protection for telephone users. Today, the vast majority of calls are dialed by the customer, without the assistance of an operator. This has greatly minimized the opportunities for intrusions on privacy. In addition, some 90 percent of our customers now have one-party telephone service, and the proportion of such individual lines is growing steadily. Direct in-

ward dialing to PBX extensions, automatic testing equipment, and the extension of direct distance dialing to person-to-person, collect and credit card calls and to long distance calls from coin box telephones further contribute to telephone privacy.

Beyond this, all Bell System Companies conduct a vigorous program to ensure every reasonable precaution is taken to preserve privacy of communications through physical protection of telephone plant and thorough instruction of employees.

Our employees are selected, trained, and supervised with care. They are regularly reminded that, as a basic condition of employment, they must strictly adhere to Company rules and applicable laws against unauthorized interception or disclosure of customers' conversations. All employees are required to read a booklet describing in unmistakable terms what is expected of them in the area of secrecy of communications. Violations can lead, and indeed have led, to discharge.

5 232 Any allegation of illegal activity leveled against any of our employees—or any evidence thereof, whether uncovered in our day-to-day operations or brought to our attention by any outside sources—is promptly and thoroughly investigated and, if the facts so warrant, appropriate disciplinary and prosecutory action is taken. Additionally, it is longstanding Bell System policy to cooperate fully with law enforcement authorities and other duly authorized government agencies in their investigations of alleged or suspected illegal activity by our employees.

In regard to our operating plant, all of our premises housing central offices, equipment and wiring and the plant records of our facilities, including those serving each customer, are at all times kept locked or supervised by responsible management personnel, to deny unauthorized persons access thereto or specific knowledge thereof. We have some 90,000 people whose daily work assignments are in the outside plant. They are constantly alert for unauthorized connections or indications that telephone terminals or equipment have been tampered with. Telephone cables are protected against intrusion. They are fully sealed and generally filled with gas; any break in the cable sheath reduces the gas pressure and activates an alarm.

With these measures and many others, we maintain security at a high level. We are, of course, concerned that as a result of technological developments, clandestine electronic monitoring of telephone lines by outsiders can done today in a much more sophisticated manner than has been heretofore possible. Devices, for example, can now pick up conversations without being physically connected to telephone lines. These devices must, however, generally be in close proximity to a telephone line, and our personnel in their day-to-day work assignments are alert for signs of this type of wiretapping too. Every indication of irregularity is promptly and thoroughly investigated.

6 5233 Our concern for the privacy of our customers is reflected too in the care with which we investigate any suspicious circumstances and all customer complaints that their lines are being wiretapped. Our Companies follow generally similar operating procedures when an employee discovers a wiretap or eavesdropping device on a telephone line. Each Company has established ground rules for the small number of these situations that occur, which take into consideration any local statutory requirements. Most frequently, when our people find improper wiring at a terminal, it is the result either of a record error or failure on the part of our personnel to remove the wires associated with a disconnected telephone. Each of these cases is, however, carefully checked. In those few instances where there is evidence of wiretapping, the employee discovering it is required to inform his supervisor immediately, and a thorough investigation is undertaken in every such case by competent security and plant forces.

In a small number of cases, a customer suspects a wiretap and asks for our assistance. Usually, these requests arise because the customer hears what are to him suspicious noises on his line. Hearing fragments of another conversation due to a defective cable, or tapping noises due to loose connections, or other plant troubles are on occasion mistaken for wiretapping. Each Company has established procedures for handling such requests. Generally, the first step is to have our craftsmen test the customer's line from the central office. In most instances, these tests will disclose a plant trouble condition. In each such case, the trouble is promptly corrected and the customer informed there was no wiretap.

In cases where no trouble is detected through testing the customer's line, a thorough physical inspection for evidence of a wiretap is made by trained personnel at the customer's premises and at all other locations where his circuitry might be exposed to a wiretap. If no evidence of a wiretap is found the customer is so informed. Where evidence of a wiretap is found, the practice generally is to report to law enforcement authorities any device found in the course of the Company inspection, for the purposes of determining whether the device was lawful and of affording law enforcement an opportunity to investigate if the tap was unlawful. The existence of the device is also reported to the customer requesting the check, generally irrespective of whether it was lawful or unlawful. The customer is told that "a device" has been found on his line, without our characterizing it as lawful or unlawful. Should the customer have any questions, he is referred without further comment to law enforcement.

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New Jersey Bell however, as a matter of policy, informs a customer requesting a wiretap check that only the presence of an unauthorized device will be disclosed. Minnesota by statute similarly limits disclosure to unlawful devices. Should the customer inquire about the presence of a lawful device, he will usually be assured that applicable Federal and State laws require any judge authorizing or approving a court-ordered interception to notify the affected customer within 90 days after interception ceases (or at a later date, if disclosure is postponed upon a good cause showing by law enforcement).

All Bell System Companies report the existence of an unlawful device to the customer requesting the check, as well as to law enforcement (upon authorization from the customer, in the instance of one Company), and the latter is provided an opportunity to investigate for a reasonable period, generally 24-48 hours, prior to removal of the wiretap.

We might point out that unless the wiretap effort is amateurish, a person whose line is being tapped will not hear anything unusual, because of the sophisticated devices employed. As we previously said, most of the complaints originate because the customer hears an odd noise, static, clicking, or other unusual manifestations. As far as our experience discloses, these usually turn out to be difficulties in transmission or other plant irregularities. From 1967 onward, for example, the total number of wiretap and eavesdrop devices of all types (including both lawful and unlawful) found by telephone employees on Bell System lines has averages less than 21 per month—an average of less than one a month for each of the twenty-four operating companies of the Bell System. In our opinion, the criminal sanctions imposed by Title III (for the unauthorized interception or disclosure or use of wire or oral communications, or the manufacture, distribution, possession, or advertising or intercepting devices), coupled with vigorous law enforcement and attendant publicity, appear to have contributed significantly to safeguarding telephone privacy.

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II

In the area of court-ordered wiretapping, it is the policy of the Bell System to cooperate with duly authorized law enforcement authorities in their execution of lawful interceptions by providing limited assistance as necessary for law enforcement to effectuate the particular wiretap. We wish to stress that the Bell System does not do the wiretapping. The assistance furnished generally takes the form of providing line access information, upon the presentation of a court order valid on its face, as to the

cable and pair designations and multiple appearances of the terminals of the specific telephone lines approved for interception in the court order.

The term "cable and pair" denotes the pair of wires serving the telephone line in question, and the cable (carried on poles, or in conduit, or buried in the earth) in which the pair reposes. A "terminal" is the distribution point to which a number of individual pairs of wires from the cable are connected, to provide service in that immediate area. A terminal may in a residential area be on aerial cable suspended from telephone poles or on a low, above-ground pedestal, or be found in terminal boxes or connecting strips in the basement, hall, or room of an office building or apartment house. The pair of wires of each telephone serviced from a particular terminal are interconnected at that terminal with a specific pair of wires from the cable, so that a continuous path of communication is established between the customer's premises and the telephone company's central office. The terminals vary in size, depending upon the needs of the particular location. To provide optimum flexibility in usage of telephone equipment, the same pair of wires may appear in parallel in a number of terminals, so that the pair can be used to service a nearby location if its use is not required at a particular point. Thus, the term "multiple appearance" denotes the locations where the same pair of wires appears in more than one terminal on the electrical path between the central office and the customer's premises.

In the instance of law enforcement authorities of the Federal government (and of those States enacting specific enabling legislation in conformity with the amendments to ? 2518(4) of Title III of the Federal Omnibus Crime Control Act effective FEbruary 1, 1971), the court order may "direct" the telephone company to provide limited assistance in the form of the "information, facilities, and technical assistance" necessary to accomplish the wiretap unobtrusively and with a minimum disruption of service. Upon the receipt of such a directive in a court order valid on its face, our cooperation will usually take the form of furnishing a private line channel from terminal to terminal (i.e., a channel from a terminal which also services the telephone line under investigation to a terminal servicing the listening post location designated by law enforcement). Additionally, the above-described line access information will be furnished for the specific telephone lines judicially approved for interception.

On occasion, assistance in the form of private line channels is furnished to Federal authorities in national security cases. This assistance is only rendered upon specific written request of the Attorney General of the United States or of the Director of the Federal Bureau of Investigation (upon the specific written authorization of the Attorney General to make such request) to the local telephone company for such facilities, as a necessary investigative technique under the Presidential power to protect the national security against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. For reasons of security, we are not informed in such cases of the specific nature of the national security matter under investigation.

In cooperating in court-ordered and national security cases, we endeavor to provide the very minimum assistance necessary to effectuate the particular wiretap. Under no circumstances, do we do the wiretapping itself; that is the exclusive province of the appropriate law enforcement officers. Nor do we furnish them with end equipment to be used in connection with a wiretap, such as pen registers, Touch-Tone dial impulse decoders, or tape recorders. Nor do we design or build wiretap or eavesdrop devices for law enforcement authorities. Furthermore, our telephone companies do not train law enforcement personnel in the general methods of wiretapping and eavesdropping, nor do we provide telephone company employee identification cards, uniforms or tools, or telephone company trucks.

III

As we have repeatedly stated to the Congress, the Federal Communications Commission, and our customers, it has been longstanding Bell System policy to ensure against the unauthorized disclosure of information relating to the existence or contents of any telephone conversation. Accordingly, we have always held toll billing information pertaining to our customers in strict confidence, divulging it only pursuant to lawful process, upon proper demand. We believe this reflects the intent of Congress and the thrust of the law, as well as sound policy.

By way of background, toll billing records are corporate records maintained by each telephone company in the ordinary course of business as necessary substantiation for its charges billed to subscribers. These records consist primarily of toll billing statements, and traffic operator tickets and automatic billing data used in the preparation of such statements. The records are generally kept for a fixed period of time, to serve the needs of the business and conform to statutory and regulatory requirements. They are normally destroyed as a matter of business routine at the conclusion of the retention period, usually six months.

These records are maintained for all subscribers, and not just for those under governmental investigation. They contain no information concerning the contents of any telephone conversation or, with the limited exception of certain collect and person-to-person calls, the identities of the actual parties participating therein.

Prior to March 1974, it was the policy and practice of all Bell System Companies to disclose toll billing information upon receipt of a subpoena duces tecum (such as that of a court of competent jurisdiction, a grand jury or a Congressional committee) or an administrative summons (from the Internal Revenue Service, for example) valid on its face. Additionally, about half of our Companies released such records upon "demand of other lawful authority" such as a letter of demand, generally on official stationery, signed by the principal prosecuting attorney of a state or principal political subdivision thereof or by a law enforcement officer of command rank (usually captain or higher), stating that specific existing toll information for a specified period of time was required in conjunction with an ongoing criminal investigation.

When, however, official copies of subscriber toll billing records were to be introduced in any legal proceeding, such as at a trial or before a grand jury, it was the practice of all Bell System Companies, as a matter of policy, to release such original records only upon receipt of a valid subpoena or administrative summons.

The Federal Communications Commission's Common Carrier Bureau had in 1973 carefully reviewed the restrictions voluntarily imposed by the Bell System upon disclosure of its toll billing records and found them more stringent than was required under Section 605 of the Communications Act and judicial decisions thereunder.

The confidentiality of our customers' communications was further strengthened when, in the course of our continuing review of these matters, the procedures were revised effective March 1, 1974 to provide that no Bell System Company will release customer toll billing records except under valid subpoena or administrative summons. Thus, as a matter of policy, these records are no longer disclosed pursuant to other lawful demand.

In addition, customers are to be automatically notified whenever toll billing records relating to them have been subpoenaed or summoned, except in those circumstances where a legislative committee or law enforcement agency seeking such records requests nondisclosure by certifying that notification could im-

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pede and obstruct its official investigation or interfere with enforcement of the criminal law.

Automatic notification to the customer is two-fold: a telephone call the same day that the subpoena or summons is received, followed by written notification within 24 hours. The notification contains all pertinent information, including the name of the party subpoenaing the records and the approximate date upon which they will be furnished.

An exception to the foregoing policies is made in the instance of national security. In such cases, the records are provided only upon specific written request of the Director of the Federal Bureau of Investigation, or of an Associate Director or Assistant Director, for such information, as a necessary investigative technique under the Presidential power to protect the national security against actual or potential attack or hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Notification is not provided to the customer.

Bell System policy regarding the disclosure of its toll billing records strikes, we believe, a proper balance under existing law. It reflects our traditional concern for and society's growing insistence upon preserving the privacy of communications. It recognizes too our obligations to comply with the mandates of lawful process and not to unduly impede official investigations, whether criminal or legislative in character. In these matters we are, in a very real sense, caught in the middle of controversy. The extent to which privacy of communications in this area should yield and where the line between individual privacy and police powers should be drawn in the public interest are, in our opinion, matters of national public policy, to be determined by the Congress after careful evaluation of the countervailing interests.

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Turning now to another area of the Commission's inquiries—the measures we employ to combat toll theft of telephone service by those clandestinely using electronic toll fraud devices—the Bell System firmly believes that whenever a communication is lawfully placed, its existence and contents must be afforded the full protection of the law.

But when wrongdoers break into the telephone network and by use of an electronic device seize its circuits so that calls can be illegally initiated, we are faced with the formidable problem of gathering evidence of such fraud for purposes of prosecution and billing. Telephone service is our only product, and its wholesale theft results in losses ultimately borne by the honest telephone user.

The Communications Act of 1934 imposes upon us the statutory obligation to prevent such thefts of service. In essence, the Act imposes upon each telephone company the duty to require all users of its service to pay the lawful charges authorized by tariffs on file with the appropriate regulatory bodies. No carrier may discriminate between its customers by granting preferential treatment to any. Knowingly to allow those committing electronic toll fraud to receive "free service" would constitute such discrimination.

Furthermore, each telephone company is enjoined, under pain of criminal penalty, from neglecting or failing to maintain correct and complete records and accounts of the movements of all traffic over its facilities. Each carrier is also obliged to bill the federal excise tax on each long distance call.

To put the matter of electronic toll fraud into historical perspective—in the early Sixties, a most ominous threat burst upon the scene, the advent of the so-called black and blue boxes. These devices enabled the user to circumvent the telephone company's automatic billing equipment and thereby illegally receive or place calls without payment of the lawful charges. A "black box" is operated by the called party, so that anyone calling that number from any location is not charged for the call. Contrariwise, a "blue box" is operated by the calling party and, because of its small size and portability, can be hidden on the person and at any time used to place an illegal call from any telephone to anywhere in the world (often by merely holding the device against the telephone's mouthpiece, without the necessity of wiring it into the line).

It was recognized that if such fraud could be committed with impunity, losses of staggering proportions would ensue. Faced with this threat, the Bell System took immediate steps to determine whether it would be necessary to undertake the monumental task of redesigning and restructuring the signalling functions of the nationwide telecommunications network—at an estimated cost to our customers ranging upward to one billion dollars. Bell Laboratories was asked to develop electronic toll fraud detection equipment to enable the Bell System to ascertain the magnitude of the fraudulent calling.

From the inception of the project, the following guidelines were established to ensure, among others, that privacy of communications would be fully safeguarded:

—The initial scanning and testing would be confined to randomly sampling a limited number of trunk lines handling outgoing long distance calls at a few representative cities.

—The scanning and testing would be automatically accomplished by mechanical means, without the intervention of the human ear.

— Recording for subsequent analysis would be confined to those calls, which when initially scanned and tested, exhibited to the equipment preliminary indications of illegality (e.g., abnormal network tones and signalling).

—These recordings were to be immediately sealed and dispatched to a centralized toll fraud Analysis Bureau to be established by AT&T in New York City. 15 524 3

—The voice recording for analysis phase would cease when other technological methods of detecting preliminary indications of illegal calling on the network were developed.

Beginning in late 1964, six "first generation" toll trunk test units, developed by Bell Laboratories principally from standard telephone components, were placed in service at the following locations: two in New York City, two in Los Angeles, and one each in Miami and Detroit. To obtain more effective sampling, one of the New York units was moved to Newark in late 1966, and the Detroit unit was relocated to St. Louis in early 1967.

These units were fully automatic and housed in locked cabinets located in secure areas in telephone company long distance switching centers. Each unit could scan only five calls at any one time, randomly selected from the traffic streaming through the one hundred outgoing long distance trunk lines to which the unit was connected. Only when the unit's logic found positive preliminary indications of illegality was any portion of the conversation recorded for subsequent analysis.

It bears reiteration that all scanning, testing and recording by these first generation units were automatically accomplished by mechanical means, without any human participation.

The recordings were placed in sealed containers and dispatched immediately by hand or through registered mail to the Analysis Bureau in New York. The Bureau was manned by a small group of closely supervised, long term management personnel who had been carefully selected and trained for this project. Each call was analyzed for pertinent statistical data and at times also provided leads as to specific offenders. These leads, including until December 1966 extracted informative recordings of suspected blue box calls, were forwarded to the appropriate operating telephone company for investigation. The recordings received by the Bureau were erased within 30 days after analysis. 17 524

During the first years of the project, these toll trunk test units were able to gather significant statistical evidence of the widespread nature of the illegal calling. Preliminary information

fo[illegible]ed by these units ultimately produced a number of successful prosecutions of major offenders, many of whom were associated with organized crime.

The project was terminated in May 1970. By that time, Bell Laboratories had developed to the field trial stage more sophisticated "second generation" equipment which permitted more effective scanning and testing of the telecommunications network for preliminary indications of electronic toll fraud, without the necessity of voice recording during the pre-investigative detection stage. Extensive use was also being made of computers, plant testing equipment and procedures, and statistical analyses. Nonetheless, despite these and other efforts and our constant vigilance, electronic toll fraud continues at flood level.

Because blue and black box devices are relatively inexpensive to make, their use has grown at an alarming rate. We estimate blue boxes can be mass produced at a cost of $25 to $50 per unit, and black boxes at a cost of a dollar or less. Our experience has shown that these devices have a unique appeal to, among others, the criminal element, whether it be a member of organized crime or an unprincipled businessman. This is so because not only is payment of the lawful telephone charges evaded, but also any record of the communication concealed, permitting them to conduct their unlawful activities under a smoke screen of anonymity.

Such crimes have never enjoyed the protection of the law, neither before nor after the passage of Title III of the Federal Omnibus Crime Control and Safe Streets Act in June 1968. A substantial number of distinguished courts, including several United States Circuit Courts of Appeals, have unequivocally held that persons stealing telephone service by trespassing upon the telephone network place themselves outside the protection of Section 605 of the Communications Act, and of Title III. In these criminal cases, our entire process of gathering evidence has been subjected to close and thorough judicial scrutiny. This judicial oversight has continued to date, with some 325 convictions and a number of pending cases, indicating the extent to which the courts at federal and state level have repeatedly reviewed telephone company procedures for gathering such evidence. With virtual unanimity, the courts have held that the methods used have been lawful, independent of cooperation with law enforcement authorities, and wholly in the public interest.

It should be stressed, too, that prosecution has been and continues to be the only effective deterrent. As to the specific methods employed by the telephone companies to gather evidence of electronic toll fraud—in contradistinction to the previously described pre-investigative preliminary scanning of the network—we have found that a minimum amount of recording of a limited number of calls is indispensable, if a prosecution is to succeed.

Since the goods being stolen are the communication itself (for example, by a blue box user), there is no alternative at this state of the art but to make, for prosecutory purposes, a limited recording of each illegal call, at least of the fraudulent dialing, ringing, and opening salutations, to:

—identify the calling party (the user of the blue box), and others with whom he may be acting in concert;

Identification of the telephone line(s) from which the fraudulent calls are originating must be followed by the more difficult identification of the specific individual(s) making the calls. This is of paramount importance.

—establish, corroboratively, the location(s) from which the specific calls upon which prosecution is to be based are originating;

—record with respect to each such call the multifrequency tones being "dialed" (key pulsed) by the blue box; and

—determine whether the fraudulent call (or series of calls) was completed by the called party (parties) answering.

Distance (as well as time) is a factor in determining the proper billing charge for a long distance call. It is, therefore, necessary to ascertain each specific location called after the wrongdoer seizes the circuit. Let us assume, for example, that a blue box user places a call from Washington, D.C. to the directory assistance operator at Chicago (312 555-1212). By then emitting a specific tone from his blue box device, the user can disconnect the operator and seize the long distance circuit "at Chicago." He can then dial from that point to any part of the country or to London, Moscow, Sydney, and other parts of the world.

The ultimate destination of each blue box call can, therefore, be determined only by documenting the multifrequency tones key pulsed. Also, as previously explained, after seizing the circuit the blue box user can make a series of calls. Should such fraudulent calls be key pulsed, determination of whether each such call was completed can only be made through recording the telltale tones. Unless the tones are captured at the very moment they are emitted, they are of course "lost forever."

Complete documentation of the requisite evidence cannot be obtained by use of regular plant testing equipment such as a peg count register (a simple electromechanical counting device that will count blue box tones). Such equipment cannot identify the fraudulent caller, nor determine whether each such call was completed, nor produce other necessary evidence. These essential evidentiary elements can only be adduced through recording.

Nor will inspection of the suspect location usually uncover the small, readily-concealed devices. Moreover, seizure of the device would not, in and of itself, establish that fraud by wire had been committed, nor by whom, nor the extent of the fraud. Nor can the Automatic Message Accounting equipment that normally obtains the information essential for billing purposes produce the necessary evidence of toll fraud.

Most importantly, the limited recording done is solely to gather evidence of calls illegally placed. This is not a "wiretapping case," where the contents of the conversations are sought as evidence of some crime other than the theft of service itself.

Limited recording by the local telephone company is done from secure locations, admission to which is tightly controlled on a "need to know" basis. This is done to maximize the protection of customers' privacy by preventing intrusion by unauthorized personnel. These quarters are kept under lock and key when not in use.

To assure the privacy of lawful communications, the telephone companies first employ a series of investigatory measures other than voice recording (e.g., a peg count register or its equivalent) to carefully evaluate the accuracy of any preliminary indications of electronic toll fraud. Only when a reasonable suspicion of such fraud has been firmly established, the possibility of plant trouble ruled out, and all other investigative measures exhausted, do the telephone companies engage in limited recording.

Recording does not begin until the caller's blue box emits a tone to seize the line. The recording is brief and usually includes:

(i) the dialing of the multifrequency tones of the number being illicitly called;

(ii) the ensuing ringing cycle; and

(iii) the opening salutations of the parties after the call is answered. Usually only 60 seconds or less of conversation is recorded. The equipment generally is adjusted to cut off automatically at the end of this recording cycle.

As part of our continuing review of all operating policies relating to the privacy of our customers' communications, we recently further refined our procedures to require that no such limited voice recording may take place without the prior express approval of the Company's Security Manager—and the concurrence of the Vice President—Operations and the Vice President and General Counsel, or their designates. In this respect, too, our

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Systemwide procedures are more restrictive than the requirements of the law.

Due to the nationwide character of such fraud, we are of the opinion that a Federal statute proscribing the manufacture, possession, importation, distribution, or advertising of electronic toll fraud devices will substantially contribute to the containment of this threat. Such a statute should also proscribe the publication of plans, specifications and instructions for making, assembling or using these devices. Numerous "how-to-do-it" electronic toll fraud articles, published by national magazines and other periodicals in recent years, graphically illustrate the invidious nature and widespread dissemination of this type of publication.

We have, therefore, submitted to the Commission a proposed statute proscribing these activities. By outlawing such conduct in interstate and foreign commerce, the availability of this narrowly-defined category of electronic toll fraud devices, for which there is no legitimate use, will be substantially curtailed. The statute will also significantly diminish the enticement of others to such criminal activities.

The proposed legislation effectively supplements the Federal "fraud by wire" provisions set forth in ? 1343 of 18 U.S.C., which prohibits the use of toll fraud devices in interstate or foreign commerce. However, prosecution under the "fraud by wire" statute, which criminalizes the use of the device, will necessarily continue to be our first line of defense and principal deterrent. Also, as previously noted, at the present state of the art a minimal amount of recording of a limited number of calls will remain indispensable to the success of any such prosecution.

In summary, we have shown that at best, detection of electronic toll fraud is difficult. We can only conjecture at the full scale of the substantial revenue losses sustained by the telephone industry and its customers. As in many criminal areas where detection is difficult, the instances of electronic toll fraud unearthed by the telephone companies represent merely that portion of the iceberg visible to the eye. The actual losses currently being sustained may be ten or twenty times as great as our proveable losses.

In none of the cases prosecuted, state or federal, has any judge ever subscribed to the thesis that the telephone companies do not have the statutory obligation to collect, through limited recording, the evidence necessary to identify those placing calls in an illegal manner. To hold otherwise would, in effect, herald to the racketeer, the corrupt businessman, and all others that they have carte blanche to operate with relative impunity.

The virtually unchecked use of electronic toll fraud devices which would ensue if the threat of detection and prosecution is removed would impose an overwhelming financial burden on the telephone industry and its honest customers, who would be required to underwrite the entire cost of these depredations, including the total loss of revenue and the substantial expense of the circuits, facilities, and equipment tied up by such illegal use. These losses would rapidly reach staggering proportions, soaring into the tens and hundreds of millions of dollars and jeopardizing our very ability to provide telephone service to this nation.

V

The foregoing reflects our experience in the areas of wiretapping and electronic surveillance, the disclosure of toll billing information, and electronic toll fraud prior and subsequent to the passage of Title III of the Federal Omnibus Crime Control Act in 1968, and our continuing efforts to maximize the privacy accorded to communications.

We wish to assure you that the Bell System continues to be wholly dedicated to the proposition that the public is entitled to telephone communications free from unlawful interception or divulgence. We are vitally interested in the protection of the privacy of communications and always welcome measures and techniques that will strengthen and preserve it.

I shall be pleased to answer any questions the Commission may have.

Telephone Company Data

On September 5, 1974 American Telephone and Telegraph Company (AT&T) furnished the Commission with a list of the total number of wiretapping and eavesdropping devices found in the United States by Telephone Company personnel on the lines (facilities, equipment, and instruments) of the Associated Operating Companies of the Bell System during the period January 1, 1967 to June 30, 1974. The list (Exhibit No. 7.a.) reflects totals by year, and a breakdown by State.

On November 6, 1974 the Commission requested that AT&T provide additional data, namely, the type of illegal device discovered, the name, address and telephone number of the subscriber, the type of service--residential or business, and the law enforcement agency notified.

On January 13, 1975 AT&T responded to this request by furnishing the names of 1000 subscribers upon whose lines illegal wiretap devices were found*. Exhibit No. 7.b. reflects a breakdown, by Associated Operating Companies, of the information.

The January 13 data submitted by AT&T shows that in 610 cases, the discovery of an illegal device was reported to the F.B.I. On January 21, 1975 the Commission requested that the F.B.I. provide information indicating the possible motives in each case, and the final disposition. Of the 610 cases, F.B.I. records show receipt of only 473. Of these, 41 occurred prior to the enactment of Title III. A breakdown of the F.B.I. response can be found in Exhibit No. 7.c. .

he list provided on September 5, 1974 indicates 1457 devices. However
&T records were not available for all the devices.

- TOTAL NUMBER OF WIRETAPPING AND EAVESDROPPING DEVICES FOUND IN THE UNITED STATES BY TELEPHONE COMPANY PERSONNEL ON THE LINES (FACILITIES, EQUIPMENT, AND INSTRUMENTS) OF THE ASSOCIATED COMPANIES OF THE BELL SYSTEM.

YEAR	TOTAL
1967	195
1968	179
1969	218
1970	195
1971	249
1972	174
1973	163
1974 (January 1-June 30)	84

H. W. William Caming
August 30, 1974

TOTAL NUMBER OF WIRETAPPING AND EAVESDROPPING DEVICES FOUND IN THE UNITED STATES BY TELEPHONE COMPANY PERSONNEL ON THE LINES (FACILITIES, EQUIPMENT, AND INSTRUMENTS) OF THE ASSOCIATED COMPANIES OF THE BELL SYSTEM.

STATE	1967	1968	1969	1970	1971	1972	1973	1974 **
Alabama	5	2	7	9	7	13	6	4
Arizona	4	3	5	2	4	2	0	1
Arkansas	0	0	3	0	0	0	0	0
California	35	21	14	21	17	15	8	1
Colorado	1	4	3	2	1	2	0	0
Connecticut	2	0	1	5	2	5	1	0
Delaware	0	0	0	0	0	0	0	0
Florida	0	7	16	21	8	2	1	1
Georgia	2	4	1	7	2	11	4	5
Idaho	0	0	0	0	0	0	0	0
Illinois	15	17	31	15	55	26	12	15
Indiana	2	0	2	3	3	4	2	1
Iowa	0	2	0	0	0	1	1	1
Kansas	1	0	1	2	1	2	8	0
Kentucky	2	3	6	5	2	3	14	2
Louisiana	0	2	2	0	0	7	6	1
Maine	0	0	0	0	1	0	1	0
Maryland	1	3	1	2	4	3	1	0
Massachusetts	0	3	7	0	19	3	3	3
Michigan	24	17	11	6	29	6	1	1
Minnesota	1	2	0	0	1	2	5	1
Mississippi	2	2	1	1	6	1	1	1

** Report covers period from January 1 to June 30, 1974.

STATE	1967	1968	1969	1970	1971	1972	1973	1974 **
Missouri	1	2	1	4	2	3	9	2
Montana	0	0	0	0	1	0	0	0
Nebraska	1	0	0	0	2	1	1	1
Nevada	2	0	3	0	1	0	0	0
New Hampshire	0	0	1	0	0	0	0	0
New Jersey	26	28	40	6	10	16	8	5
New Mexico	2	3	0	2	2	0	0	1
New York	0	0	1	5	5	5	10	0
North Carolina	3	3	1	6	4	3	4	1
North Dakota	0	0	0	0	0	0	0	0
Ohio	7	3	6	13	5	3	13	15
Oklahoma	0	0	0	0	0	0	0	0
Oregon	0	0	1	1	2	4	1	0
Pennsylvania	20	14	17	11	12	4	8	5
Rhode Island	0	0	1	0	0	0	0	0
South Carolina	0	5	3	3	8	5	7	1
South Dakota	0	0	0	1	0	0	2	0
Tennessee	14	8	10	6	13	4	0	3
Texas	13	16	9	18	9	9	4	6
Utah	1	3	1	3	1	3	0	1
Vermont	0	0	0	0	0	0	0	0
Virginia	0	0	1	2	4	2	6	0
Washington	6	1	2	5	4	2	4	3

** Report covers period from January 1 to June 30, 1974.

STATE	1967	1968	1969	1970	1971	1972	1973	1974
Washington, D.C.	0	0	2	0	0	2	0	0
West Virginia	0	0	0	1	0	0	5	0
Wisconsin	2	1	6	7	2	0	6	2
Wyoming	0	0	0	0	0	0	0	0
TOTALS	195	179	218	195	249	174	163	84

** Report covers period from January 1 to June 30, 1974.

DATA CONCERNING ILLEGAL ELECTRONIC SURVEILLANCE DEVICES FOUND BY TELEPHONE COMPANY PERSONNEL ON THE LINES (FACILITIES, EQUIPMENT, AND INSTRUMENTS) OF ASSOCIATED COMPANIES OF THE BELL SYSTEM
JANUARY 1, 1967 to JUNE 30, 1974

TELEPHONE COMPANY	NUMBER OF DEVICES FOUND	*CLASS OF SERVICE	**TYPE OF DEVICE	CASES REPORTED TO LAW ENFORCEMENT
New England Telephone Mass & Rhode Island	47	39 RES 7 BUS	6A 41C	45
New York Telephone	10	9 RES 1 BUS	6A 4C	10
New Jersey Bell	126	101 RES 22 BUS 1 Public Coin	40A 4B 81C 1D	122
Bell of Pa. Pa. & Delaware	45	36 RES 9 BUS	10A 1B 34C	39
C&P Company Wash., D. C.	2	1 RES 1 BUS	1A 1C	2
C&P of Maryland	27	19 RES 8 BUS	8A 18C 1D	20
C&P of Virginia	27	20 RES 7 BUS	7A 20C	15
C&P of W. Virginia	9	8 RES 1 BUS	2A 7C	8
Southern Bell Florida	74	57 RES 9 BUS	35A 39C	65
Southern Bell Georgia	50	48 RES 2 BUS	6A 44C	42
Southern Bell North Carolina	16	14 RES 2 BUS	4A 12C	14
Southern Bell South Carolina	32	28 RES 3 BUS	5A 27C	30
South Central Bell Alabama	40	34 RES 6 BUS	10A 30C	40
South Central Bell Kentucky	17	12 RES 5 BUS	9A 8C	17
South Central Bell Louisiana	22	14 RES 7 BUS	3A 19C	21
South Central Bell Mississippi	3	3 RES	1A 2C	3
South Central Bell Tennessee	56	52 RES 4 BUS	14A 5B 35C 2 Unknown	55
Ohio Bell & Cincinnati Bell	32	30 RES 2 BUS	3A 28C 1D	25
Michigan Bell	20	18 RES 2 BUS	2A 14C 4D	15
Indiana Bell	16	14 RES 2 BUS	6A 9C 1 Unknown	13

152A

TELEPHONE COMPANY	NUMBER OF DEVICES FOUND	*CLASS OF SERVICE	**TYPE OF DEVICE	CASES REPORTED TO LAW ENFORCEMENT
Wisconsin Telephone	22	21 RES 1 BUS	13C 1D	20
Illinois Bell	38	30 RES 8 BUS	27A 11C	0
Northwestern Bell Minnesota	10	8 RES 2 BUS	3A 7C	10
Northwestern Bell South & North Dakota	6	6 RES	6C	6
Northwestern Bell Nebraska	4	3 RES 1 BUS	1B 3C	4
Northwestern Bell Iowa	4	3 RES 1 BUS	2A 2C	3
Southwestern Bell Missouri	19	17 RES 2 BUS	1A 18C	16
Southwestern Bell Kansas	11	10 RES 1 BUS	1A 10C	11
Southwestern Bell Arkansas	3	2 RES 1 BUS	2A 1C	3
Southwestern Bell Oklahoma	3	2 RES 1 BUS	2A 1C	3
Southwestern Bell Texas	90	74 RES 16 BUS	31A 2B 54C 3D	75
Mountain Bell	0	0	0	0
Pacific N.W. Bell Washington	8	6 RES 2 BUS	4A 4C	8
Pacific N.W. Bell Oregon	7	6 RES 1 BUS	7C	7
Pacific Telephone Nevada	4	3 RES 1 BUS	1A 3C	4
Pacific Telephone California	100	77 RES 23 BUS	31A 3B 65C 1D	100
South New England Bell Connecticut	9	7 RES 2 BUS	4A 5C	6
TOTAL	1009	832 RES 163 BUS 1 Public Coin	295A 16B 683C 12D 3 Unknown	877

*Class of Service: RES - Residence, BUS - Business

**Type of Device: A - Radio Transmitted - Metallically coupled (Hardwire)
B - Radio Transmitted - Inductively coupled (Transmissions picked up from magnetic field around wire)

DATA CONCERNING ILLEGAL ELECT

MOTIVE

DISPOSITION	MARITAL	U
NUMBER OF CASES	279	
* U.S. ATTORNEY DECLINED PROSECUTION	241	
HANDLED BY LOCAL AUTHORITIES	7	
CASES RESULTING IN AN ARREST INDICTMENT and/or PROSECUTION	13	
INVESTIGATION DISCONTINUED	8	
INVESTIGATION NOT CONDUCTED	5	
NO VIOLATION OF TITLE III	4	
DISPOSITION UNKNOWN	1	

* Reasons for declining prosecut
and expiration of the statute

** includes cases involving theft

F.B.I. inquires at various
They are as follows: 10 M

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EXHIBIT NO. 7.c.

AINTS RECEIVED BY THE F.B.I. FROM ASSOCIATED OPERATING COMPANIES OF THE BELL SYSTEM
JANUARY 1, 1974 to JUNE 30, 1974

EMPLOYEE DISHONESTY	COURTSHIP SITUATION	POLICE (UN-AUTHORIZED)	POLITICAL	INDUSTRIAL ESPONAGE	BUSINESS (FRAUD & INTERNAL PROBLEMS)	**OTHER	TOTAL
7	13	4	2	8	15	46	473
4	11	0	1	4	7	18	339
0	1	1	0	0	1	0	15
3	1	1	1	1	3	2	27
0	0	2	0	2	2	1	41
0	0	0	0	0	0	0	16
0	0	0	0	1	2	24	34
0	0	0	0	0	0	1	2

idence, lack of prosecutive merit, a marital case with no professional interceptor involved,

ranks, sexual curiosity, etc.

abished 22 cases which were reportedly referred to them but did not appear in F.B.I. records.
venile prank; 4 No violation; 1 internal business problen and 2 Unknown.

Exhibit Three

to Affidavit

of Katz

JWjw [1]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiffs,

76 Civil 770

-against-

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION,

Defendant.

----------x

February 23, 1976
9:50 A.M.

B E F O R E :

HON. JOHN M. CANNELLA,
District Judge.

A P P E A R A N C E S :

BRASHICH, FINLEY & POSTEL, ESQS.,
Attorneys for Plaintiffs
JOHN W. FINLEY, JR., ESQ., of Counsel

GEORGE E. ASHLEY, ESQ.,
Attorney for Defendants New York Telephone Company and Reuben H. Donnelley Corporation
PATRICK F. WALSH, ESQ., of Counsel

-and-

KENNETH J. LUCEY, ESQ., of Counsel
Attorney for American Telephone & Telegraph Company

jwjw [2]

MR. FINLEY: Your Honor, if I may, at this time I would like to hand up the answering and supplemental affidavit and the memorandum of law that we prepared.

Mr. Walsh from the Telephone Company will acknowledge for the record that he received a copy in court this morning.

Your Honor, if I may proceed with my motion, this is a motion for a preliminary injunction, pending the final determination of this litigation, the injunction of the publication of the Yellow Pages directories of the New York Telephone Company by reason of the fact that the defendants have failed and refused arbitrarily and capriciously to include in the paid classified advertising section of the Yellow Pages directory for the County of Queens an advertisement which is innocuous, which is neutral, which is truthful, factual and accurately descriptive of the legitimate activity engaged in by licensed private investigators for the collective plaintiff in this case.

The service which plaintiff provides, among others, is the detection, suppression and removal of unwanted and illegal electronic eavesdropping analyzing devices in the home or office of telephone subscribers.

And it is that precise language which was employed in the advertising copy submitted to the defendants.

jwjw [3]

The defendants have adopted a position set forth in the exhibits annexed to the Katz affidavit which are their own rules and regulations for submission of materials in connection with advertising, particularly with reference to the type of work that the plaintiff seeks to engage in in this state.

Specifically the Telephone Company has adopted as its operating premise that language such as debugging or wiretap removal or words of similar import connote the offensive potential for the placement of such devices in homes and offices or other locations where the defendants' telephone equipment may be placed pursuant to subscription under the tariffs of the State of New York imposed by the Public Service Commission.

The basis for the contention of the defendant that they have the right to suppress the language that the plaintiff would employ in its advertisement is the lack of recognition by the PUblic Service Commission in that they may, as an adjunct to their telephone service provide an advertising service whereby in their publication they may accept or reject with impunity the proposed advertisements of subscribers to telephone service, or otherwise in this state.

The reasoning that obtains on the part of the

jwjw [4]

Telephone Company is that the capacity to remove, to detect and to suppress permits the inference on the part of the subscribers to the telephone service in the State of New York who receive gratuitously these Yellow Pages that if they wish they can ask these private investigators to place illegally such wiretap or electronic eavesdropping devices.

Now, we presented in our papers the arguments that if this falacious line of reasoning were to hold water then every doctor would necessarily, pursuant to the thinking of the Telephone Company, be considered an abortionist and his ad should not be run in the Yellow Pages, every engraver would be considered a counterfeiter, every locksmith --

THE COURT: I thought abortion was legal now.

MR. FINLEY: It may be legal, it may not be legal in other states. And this is a point I would like to address myself to, and that is the factitious contention on the part of the defendants that the New York Telephone Company and its activities are wholly independent of any other system-wide telephone company located in any other state.

And the defendants' affidavit in opposition to this motion clearly gives the lie to that concept. In

jwjw [5]

fact, Mr. Bnnett, if I may just digress a moment, acknowledges that he placed a call to his company co-equal in the Chesapeake and Potomac Telephone Company after he saw one of the exhibits wherein another company advertised similar service.

THE COURT: I saw that.

MR. FINLEY: And he has effectively caused that Chesapeake Telephone Company to remove under the easy rubric of a clerical error the advertising which now after extensive period of time of publication in that Yellow Pages is deemed to be offensive.

In fact, if we really wanted to get down to cases the Illinois Telephone Company, another wholly-owned subsidiary of the American Telephone & Telegraph Company, in fact has the precise language that is employed by the New York Telephone Company in connection with the type of activity that the plaintiff herein sought to engage in and advertise in the Yellow Pages of Queens County.

Indeed, the attorney, I believe the general attorney for AT&T testified in the last year for the National Wiretap Commission that in fact they see to it that all of the subisidary companies adhere to the same line of reasoning and they attempt, the telephone companies

jwjw [6]

through their parent, attempt to be a guardian which may be laudable of the public good in terms of availability of telephone eavesdropping equipment.

THE COURT: As far as your antitrust consideration is concerned in this case, are you expanding it to all these areas you are talking about?

MR. FINLEY: I would like to carefully delineate the antitrust claim.

THE COURT: That is what I am wondering about, because you are talking about a lot of locations which would create a market that is quite a market in my opinion.

If you are going to do that, I would like to know about it, but if you've got a market that is Queens County, all right.

MR. FINLEY: I want to talk about the relevant market.

THE COURT: All right.

MR. FINLEY: And I am not certain whether this could be aptly described as one of the old fashioned bathtub conspiracies, but certainly we do have a clearcut pattern on the part of the Telephone Company in one limited area where the activity they ex parte enjoined by refusing the advertising copy to go into the Yellow

jwjw [7]

Pages is limited to a form of economic activity which is directly competitive with one of the main services that the Telephone Company provides.

There are two major aspects to the Sherman Act conspiracy claim that we make. The first basic proposition is that the Telephone Company has not only a dominant position in the Qyeens County market, it has a monopolistic position. There is no other Telephone Company which provides broad-scale telephone service to the citizenry of Queens County.

Number two, the Telephone Company is the exclusive publisher of the Yellow Pages for the County of Queens. There is some argument made in the opposing papers that there are other means of access for the public to gain information of the existence and of the services that this plaintiff could provide, but there is no other means of conveying this information than the Yellow Pages to all telephone subscribers in the County of Queens.

And, in fact, this service is provided and paid by the New York Telephone Company to all of its subscribers. The Yellow Pages are delivered along with the regular directory.

THE COURT: Aren't there local telephone listings like Little Neck, Douglaston, places like that?

jwjw [8]

MR. FINLEY: Sure, but a man in Bayside may not have that insert and certainly there is no other mechanism which on a broad scale basis --

THE COURT: How do you know what the extent of that area is?

MR. FINLEY: Well, we have checked into it and I believe the Telephone Company has indicated that there are thirteen, I believe, in the metropolitan area but if this Court were to review the exhibits attached to our moving papers you would see none of the advertising material.

In fact, the cost is so prohibitive,but an extrapolation,if we were to carry out the same type of exposure that is provided by access to the Yellow Pages, it has been computed by the plaintiff that we would have to pay something on the order of $2.2 million in each and every year as part of the buget of this man investigating to have the same type of access to the relevant market that is provided through the monopolistic document that is generated by the Telephone Company each and every year.

THE COURT: Is this contained in your papers, because I haven't read all of this? Some were only handed up to me now.

MR. FINLEY: Yes, I am trying to boil it down

jwjw [9]

to a very careful delineation of what appears in the papers.

Secondly, not only do they have the control of the telephone system -- and we don't argue that is bad -- but not only do they have that, they also have control of the exclusive instrument by which every telephone subscriber -- there is no other competitive instrument -- has access to information about private investigators who would offer a legitimate service and the Public Service Commission does not grant to the Telephone Company the type of monopoly that it otherwise has under its tariffs to charge whatever the state will permit.

Instead, the Public Service Commission, as the defendants very definitely concede, does not attempt to regulate the content or the dissemination of the Yellow Pages.

It is just that everyone should have a copy. The consequences of this is the defendants make a claim they arbitrarily and capriciously, and really rely on a host of cases in their memorandum of law, permit only those who advertise by their ethical or other standards they feel should advertise.

The problem is that is all right if you divorce entirely a publication from the same entity that

jwjw [10]

in fact controls the monopoly that that publication is intended to service. The very basic notion that we have to contend with now is that the Telephone Company in an area where it engages in an activity prevents others from having a truthful, fair and legitimate statement of their proposed activity which is --

THE COURT: Has this been litigated anywhere else that you are aware of?

MR.FINLEY: Not this. This particular issue has not. But I suspect if we want to speculate that it certainly will be litigated in certain other districts whereas a result of the defendants phone call they are attempting in future publications to exclude the same type of advertising they have permitted in the past.

What we see is a falling into line of other jurisdictions, of other phone companies to be more precise with the New York Telephone Company position, and the consequence is that there is no other valid logical rationale for what has taken place since the institution of this action other than the fact that the parent, the octopus, AT&T extends its tentacles into every other operating and telephone company and says "We are not going to control you" but the obvious implication is clearly they must fall into line or they are going to make New York

jwjw [11]

look silly.

This is precisely what Bennett did when he contacted the Chesapeake Telephone Company.

It is a farce and I say to this Court that I have never seen anything as ridiculous as a presumption of guilt on the part of licensed private investigators that they will engage in an illegal activity.

THE COURT: I think you covered that area. You are saying what the defendants' argument is rather than what your argument is. I think it is better they tell me what your argument is rather than you.

What I would like to know from you is, for example, in the other basis of this action,namely the so-called First Amendment action which is the State action here.

MR. FINLEY: Very clearly.

THE COURT: And what authority do you have for that?

MR. FINLEY: If your Honor please, I saw these papers for the first time very late last night.

THE COURT: So did I.

MR. FINLEY: If your Honor will bear with me, I have a very reasoned approach to the question of the First Amendment freedom and the 1983 claim.

jwjw [12]

The authority I do not have at my fingertips but. --

THE COURT: Do you have it in the papers?

MR. FINLEY: I haven't had the time to deal with that, and I would ask the Court's leave to file an additional memorandum dealing with the 1983 claim and the pendant jurisdiction claim.

THE COURT: You have authority to do it as of yesterday.

MR. FINLEY: The hours didn't exist.

THE COURT: You have a situation here which must come to a conclusion before the 1st of March and if I start to give time to submit other papers -- I would give some rasonable time but certainly it should be done with some celerity.

MR. FINLEY: I would not need more than 24 hours to address the second cause of action and the second cause of action the pendant jurisdiction claim espousing the claim for violation of state law, the Sherman Act claim and the 1983 claim, the civil rights claim.

If I might address myself to your question as to the activity or usage under coded or state law, it is quite apparent from the chain of cases which the Court has foisted me on --

THE COURT: The lynching of a man by a posse,

jwjw [13]

for example.

MR. FINLEY: No, I don't know the lynching of a man by a posse case, but I do know where state activity in terms of regulation --

THE COURT: An illegal posse by the way not a legal posse.

MR. FINLEY: I claim lack of knowledge of the case. But where a state purports to act through a regulating agency such as the Public SErvice Commission and it permits a range of activities and supervises it, guides it and indeed lets that enterprice be the sole entity to engage in that activity that enterprise was monopolistic position as a public utility engages in an activity under the color and usage of the state and it has the approbation of the state, it carries on its functions pursuant in this case to a tariff, it is clearly delineated, the activity that I may or may not engage in and how it may conduct it.

But here the Public Service Commission has considered the Yellow Pages an unwanted stepchild. And we don't know for what reason, whether it was something that was spontaneously the product of the thinking of the Public Service Commission or whether indeed the Telephone Company wanted it that way. I haven't the

jwb [14]

foggiest idea what the generating cause was, but the fact of the matter is that the State of New York through the Public Service Commission has insinuated itself into the operation of the telephone company to the degree that the State of New York is deemed and must be deemed to have approved all of the activity of the telephone company to to date that it has not already suppressed by its own action.

The telephone company in its relationship with third parties, where it tends or in fact does prevent someone, a member of the public, from asserting a right protected by the Constitution and further protected under 1983, is answerable to this Court for its activity which is violative of a right of free speech, equal protection, which is clearly not provided this plaintiff when you compare this cplaintiff with someone that non-competitive activity that the telephone company isn't really concerned about such as the masseuse who might be considered a prostitute by the same reasoning that the telephone company applies to the plaintiff in this case.

And the necessary conclusion that we find that is forced by this argument is that clearly this plaintiff is being deprived or right of access to a medium of dissemination of information which all others have been allowed save this plaintiff in this particular category,

jwb [15]

with the ominous appearance of an attempt to suppress activity which would be competitive of the phone company.

Whether it would be competitive from a financial standpoint or whether it might be generative of embarrassment because of the figures that the telephone company and AT&T have released, indicative, if I am not mistaken about the numbers, approximately one per cent effectiveness in connection with claims of illegal surveillance.

Now, I think, and I am sure counsel will want to make a point of this, that my percentage figure necessarily includes in the rank of complaints those that may be false complaints because someone heard clicking on the line.

But the fact of the matter remains that there is no empirical evidence whatsoever that this plaintiff or any other plaintiff has ever engaged in the activity that the defendant would wish to prevent by its chilling effect in that Yellow Pages by suppressing the ad, nor that this plaintiff has engaged in that activity or there has even been a complaint about it.

And we are entitled to a presumption of not only innocence from wrongdoing, but of good reputation and standing in the community.

Their papers are absolutely without any scintilla

jwb [16]

of factual matter indicative of how the telephone company could conclude that this plaintiff would engage in the activity that their general rule and regulation seeks to prevent.

THE COURT: All right. I will hear the other side.

MR. WALSH: If your Honor please, I am Patrick Walsh.

I am of counsel for George E. Cashley, your Honor, and I appear this morning on behalf of New York Telephone Company and Reuben H. Donnelley.

With all respect to the counsel for the plaintiff, I think the one proposition he has argued and convinced me certainly is he hasn't had a chance to go over the papers in this case.

I don't know where to begin with the misrepresentations I heard. But let me begin, Judge, with a point you raised earlier about a need for a disposition in this case.

I would very much, your Honor, urge the Court that it can and should reach that disposition this morning or certainly today.

When we speak of a printing schedule, your Honor, that has our next directory going to press on March

jwb [17]

1, it is not a case of our sitting around and drinking tea between now and then, Judge, we have a tremendous amount of work that goes into the pre-printing process and I have attempted to bring that up in the papers.

THE COURT: My reason for asking that was that I wanted to make a judgment as to whether or not under Rule 65 I would do the whole thing as one ball of wax at this time.

MR. WALSH: I would urge the Court respectfully, as I have in my papers, your Honor, that you could not not only this morning dealing for a motion for a preliminary injunction, but that you can hear both sides and if the opportunity presents itself to you -- we realize the papers are not exactly brief in this case -- that you can dispose of the entire matter.

The plaintiff has submitted itself to this Court's jurisdiction, and has failed to make out any claim whatsoever cognizable under the Federal law, and having attached appendant jurisdiction claim to it and asking this Court for a disposition on it as well, since they are based on an utterly basically factual allegation, I respectfully urge, Judge, that you can have a disposition here not only on the merits, but the suit as well, and you can dismiss the action in its entirety.

jwb [18]

What we are dealing with in this case, Judge Cannella, is the attempt of two partners in a newly formed business to have an ad published in the Yellow Pages owned and printed by the New York Telephone Company, not by AT&T, and not by the defendant Donnelley.

At least since 1939, when the Public Service Commission did deal with this issue, and the plaintiff points that out, that we are regulated in every aspect of our rendition of telephone service by the Public Service Commission of New York, the significant points here, when you start speaking about monopolies, we are, of course, a regulated monopoly in the State of New York.

The PSC of the State of New York, Judge, can and does regulate all aspects of telephone service rendered by the New York Telephone Company.

Beginning not later than 1937, they examined this question of the Yellow Pages. This phone company prints the Yellow Pages, what about that, are we going to regulate that? The Public Service Commission held at that time that is not an incident or so closely related an incident of the telephone service as to require regulation on our part.

It declined to regulate the advertising aspects, your Honor, of the Yellow Pages of the New York Telephone

jwb [19]

Company.

And to my knowledge, your Honor, that is the phone company we are dealing with here today.

A consistent line of New York cases, your Honor, beginning with the Court of Appeals shortly after the 1937 PSC determination and running all the way to just a few months ago, your Honor, when I had one of these cases, if I may say, tossed across the street in the State Court, there is a consistent line of New York cases that holds for the proposition that in its publication of the advertising position in the Yellow Pages, the New York Telephone Company is not acting as a public utility or remotely under State law, but it is,under the Hamilton case, situated in our brief, your Honor --the Hamilton case made a comparison to a railroad that publishes a timetable.

There is, your Honor, a consistent line of New York cases that recognizes that the Yellow Pages is a private publishing enterprise and in this Circuit, your Honor, Judge McLean today, in the case cited in our brief, confirmed that very same point, this is not a public utility enterprise, it is a private contract enterprise. That is what we are dealing with in this case. And that is the major fallacy, Number 1, of the plaintiff's

jwb [20]

very imaginative evidence to have this case, a similar contract dispute, your Honor, heard in this court.

The case gives meaning to the expression of trying to make something into a Federal case that is not.

We have a cimple contract dispute, there is no State action involved. The Courts have held consistently in the State of New York that we are a private enterprise and it was confirmed in the McTighe case.

THE COURT: Any point made in those cases there was an anti-trust aspect.

MR. WALSH: I don't believe so, but to answer your Honor's question of has this been litigated anywhere else, there was a case in the State of Missour, your Honor, that went to the Missouri Commission, relating to this standard about the advertising of eavesdropping devices, or the ability to detect and remove them. The policy applied there was the policy applied in this case. At this point, Judge, Cannella, I should add it is a policy consistently abided by the defendant New York Telephone Company whose Yellow Pages are the subject of this litigation.

In that case in Missouri, your Honor, the plaintiff said in its complaint to the Public Service Commission, "The telephone company out here said I cannot advertise this ability to detect eavesdropping devices."

jwb [21]

He is not quite as imaginative as here. He didn't say the telephone company involved was trying to eliminate competition in the so-called debugging. It was a more forthright complaint, "I looked in the directory and over in your other section in Jefferson you have got some of these guys there and this has anti-trust implications for me because you are letting them, my competition in this business, advertise and not me."

The Missouri Commission had a very extensive hearing and they concluded the Southwestern Telephone Company was engaged in a conscious effort to eliminate such advertising under its policy not to publish it.

And they concluded as well, "Look, it is a heck of a big project and some of them are going to get by you and we have been assured in this hearing that is what will happen here with respect to those few cited by the plaintiff."

In that Commission case, your Honor, which was in 1971, that was followed by a Federal lawsuit brought by the same plaintiff Markowitz v. Southwestern Bell and AT&T, and in the Federal lawsuit he joined AT&T.

The Federal Court didn't go into great detail on the issues, your Honor, other than to reject them as having been adjudicated by the Missouri Commission, and

jwb [22]

they told the plaintiff in that case, "Well, look, these claims you have have already been adjudicated, the facts underlying the claims have been adjudicated, so you have been collaterally estopped."

The plaintiff said, "What about my cliam under 983, and this anti-trust action I have," and the Court said, "We don't have to delineate them,"and the Federal District Court dismissed that action, your Honor, on the basis of collateral estoppel.

Your Hon,r the Federal omnibus Crime and Safe Streets Act of 1968 makes it a crime to advertise devices that can be used for eavesdropping.

Long before that time, however, under Federal and State law there were prohibitions against such activities, electronic eavesdropping, listening and so forth. It has long been the policy of the New York Telephone Company, it was not invented for this case,as I think the plaintiffs acknowledge. They just didn't bring this thing out and say we don't like you, and prohibit the ad.

We don't say we can bug a place for you for the obvious reason it is illegal to do those things, and especially since the Federal legislation of '68, which expresses itself against this whole questionable and highly innocuous business.

jwb [23]

This is not the same as the case of looking under the sink for vermin. This is very controversial and certainly the Federal law states it is illegal there. And New York Telephone Company, in connection with the policy, said why don't you take the ad. We do that. It is attached to the complaint, a copy of the policy, as is the policy of the proposed ad which states, "We can detect and remove unwanted and illegal electronic listening devices."

We don't public that ad.

The policy says, "State and Federal laws prohibit the advertising of bugging devices," and it has in any event long been the policy of the Bell System in general and New York Telephone Company, in particular, to respect the privacy of communications. We are in a very uniqur position and very subject to be scrutinized. We cannot afford to be careless in this case.

So we have interpreted that policy at New York Telephone Company to include a prohibition not only against the admittedly illegal advertising of bugging devices, but we don't advertise for anybody, not just for this plaintiff, we don't advertise for anybody, we don't place in our Yellow Pages any ad that suggests or states that the advertiser has available equipment or services or

jwb [24]

facilities for the detection and removal of bugging devices.

The plainitffs jump and yell and say,"That is not us, we are not in that, we only do legal bugging or legal debugging" --

MR. FINLEY: I object.

MR. WALSH: It was only a slip of the tongue.

MR. FINLEY: No slip, it goes along with the attitude.

MR. WALSH: I apologize for the slip of the tongue.

THE COURT: If I were to make a judgment, I would think it was a slip of the tongue, but I don't have to.

MR. FINLEY: If your Honor's judgment is that I withdraw my objection --

MR. WALSH: We interpret that policy to exclude so far debugging itself, because we believe as a private publisher of ads in our Yellow Pages, we believe that people who have the capacity --

THE COURT: Just for the sake of argument, you were advertising the security system of putting in alarms, doesn't that suggest crimes would be committed using your reasoning?

MR. WALSH: Your Honor, putting in alarms of

jwb [25]

the type you are talking about has got nothing to do with this eavesdropping concept that violates the law in a positive system.

THE COURT: It has to do with preventing an illegal action by somebody else and that might suggest according to our reasoning if somebody saw we are selling security devices,and this building is furnished with them, that this is a source of possible burglary or some other crime.

MR. WALSH: With all respect, your Honor, I do think the cases are somewhat distinguishable in that is a security service being offered on the part of a fellow who puts in fire or burglar alarm systems.

THE COURT: Suppose he put the patrolman there, Holmes Agency or McBridge, the fact that he does that and advertises in your Yellow Pages would that suggest to somebody, "Hey, this is a place to go and burglarize"?

MR. WALSH: I hope it does not. I hope it has the contrary effect.

THE COURT: Why does this any more suggest to someone interested in bugging, because there was an ad that says we will debug, we will go and bug somebody?

MR. WALSH: What the policy entails, as I understand it, your Honor, is a situation where we believe

jwb [26]

that to advertise that you can go out, detect and remove, that it is not unreasonable, that it is not arbitrary or capricious to say that somebody who has the expertise, the experience to go out and detect and remove such listening devices, also has or may have as part and parcel of that same expertise the ability to go out and advertise such such devices.

THE COURT: If that be so, why can't the guard go in and burglarize the building? Why assume the man is going to do an illegal act or it is possible they may bug as well as debug?

MR. WALSH: No, your Honor, what we are employing here is an admittedly cautious policy that suggests that we see a possible area here where somebody --

THE COURT: Isn't your reasoning the basis for that? I know you have this principle and I know it was attrative to the person who made the principle, and I I know that he is using the old saying that Caesar's wife should be above suspicion, but what is the logic of it? Where is the logic that simply because you say you are going to prevent something that you will then assume that the thing that is being suggested to be prevented is going to happen because somebody thinks he wants to do that as a result of you putting an ad in the paper?

jwb [27]

MR. WALSH: We have adequate reasons, your Honor. I feel, Number 1, of course I would argue and hope to convince the Court that that is a policy determination made by us based on our extended experience in this area, that should not, absent some absolutely arbitrary or capricious or unreasonable application,be set aside by the Courts.

THE COURT: Hawn't your company been surreptitiously doing this and in fact prosecuted for it and sent to jail and fined?

MR. WALSH: I am sure the record will reflect if they have, they certainly haven't been encouraged, anything other than fired or dismissed for engaging in any such activities that we have ever become aware of.

THE COURT: Why doesn't this service, taking your logic, say maybe there is a bad apple -- what this fellow --

MR. LUCEY: Spindel.

THE COURT: No. Brody. Brody is the one who was caught, but that is the tip of the iceberg, and why shouldn't somebody avail himself of this service?

MR. WALSH: May I say in connection with Spindel,very much like the plaintiffs in this action -- and again I am not anticipating a possible objection here --

jwb [28]

I say it is not unknown that people like Spindel, when he wrote his biography in '68 said,"I don't do legal bugging," and then when he did it two years later, he was under sentence.

THE COURT: Don't you think it lends itself to the argument if that is the fact and that is the case, and the telephone company thinks it is so because they have a service for doing this, why shouldn't somebody else do it? You don't rub off on your telephone company as having bad motives when they go out and get contracts like this? Why shouldn't it be when they want to get a contract like this, you say wait a minute, they are going to put thoughts and ideas in people's minds that they can bug these instruments?

MR. WALSH: Your Honor, perhaps one distinction I haven't made clear in my argument, the plaintiff's business is the plaintiff's business, and if he wants to go into that business fine and good. I wish them well. I understand it is a fledgling business from their papers. But we have a business, too, and it is a private enterprise publication business and if they want to go out and offer these services they can do that.

THE COURT: How does the public find out about the fact that you have this service?

jwb [29]

MR. WALSH: Your Honor, as set forth in our papers and there is an affidavit submitted to the Court by one of our security personnel, William F. McGarty, in this respect we don't provide any programmed broad-scaled service in this area. We have telephones that we lease for hire to the public. We, from time to time, receive a call from a subscriber and this, as I think the McGarty affidavit points out, your Honor, is a somewhat typical case. Someone will call in to the telephone company and say there is a noise on my phone. He is our subscriber. We want the phone in a position where he can use it. That is a cost item --

THE COURT: Do you say this is by happenstance and you don't in any tell your subscribers about this possible service?

MR. WALSH: I say we do not advertise any service for the debugging of the telephones.

THE COURT: Do you charge for that?

MR. WALSH: There is no charge, your Honor. There is no more charge for that, your Honor, than there would be if you said there is a loud whirring noise on my phone or I can't get a dial tone. To the extent that work is done, your Honor, it is done principally by repair personnel of the New York Telephone Company.

jwb [30]

THE COURT: To get into the overall costs not as a cost which goes to the subscriber except by inference?

MR. WALSH: Your Honor, very remote indirection, even, because it is just not a big part of our business. What we do, your Honor, on the request of a subscriber, is go out and check his phone if there is a noise in it. Whether or not he ever mentions that we are going to check the phone and get the noise out of there, so he can Dial-a-Joke or Dial-a-Phone, we want people picking up that phone and using it. The responsibility that goes with that business, and a very proper concern, is for privacy of communication.

THE COURT: That is exactly what they are trying to do.

MR. WALSH: Your Honor, what I am trying to say to the Court is that the policy judgment and decisions that New York Telephone Company has made with respect to this private enterprise aspect of its business, and they have enough evidence to satisfy themselves of a hazard in this area, is that the public --

THE COURT: What is that based on, do you know?

MR. WALSH: Well,your Honor, to just take a very typical example, not long ago an article in Newsweek -- just to give you an example of what I am talking about -- a

jwb [31]

New York expert in this field recites in discussing his work -- and he is in the business of detection and removal -- he recites in connection with his work, your Honor, that -- I am looking now, your Honor, at the Newsweek for the date August 18, 1975, page 59, an article captioned "The Debugging Mania," and if I may, just read one sentence from it, your Honor.

"New York security specialist, Arthur Katon notes for every inquiry he receives about his debugging service, he turns down five requests to do illegal bugs."

Why do I cite that,Judge, only to say we are not out in Mars on this policy. We have a public that uses this book and as the Missouri Commission and the California Commission noted in every expressed language in that Markowitz case I cited earlier, and in another case before the California Commission, we have an obligation to the people who pick this book up and utilize it. And more than that, your Honor, we are,as those two Commissions I mentioned stated, we are associated in the minds of many of the leaders of the Yellow Pages with the contents of those ads.

They associate the phone company with it and they associate the phone company with the practices engaged in on the part of the people who advertise in there and we

jwb- [32]

have a right, particularly in this private enterprise area, not a right to be just mean and stupid, as the plaintiff seems to suggest, but a right to have a very real concern for the protection of privacy, for compliance with law and for avoiding even the appearance of impropriety in such advertising.

THE COURT: So Mr. Katon tells you in that article when he got these requests, five of them or whatever they were, for debugging the place, he reported it to any authority, or did he consider it part of his obligation as a licensed person to indicate to the authorities that he got these requests?

MR. WALSH: Your Honor, without even looking back at it, I will look at the article if you want me to, but I am sure he did whatever was right, I am sure he did whatever he was under an obligation to do in that situation. But whether he did or didn't, your Honor, I think you are asking for an illustration of where do you get this wierd policy? It is not a wierd policy, your Honor. It is a very straightforward policy that makes an assumption about what the public believes.

I think what the plaintiffs might show in this case is that Ma Bell is a nervous old lady, or New York Telephone is a very finisky old lady about these things,

but that does not amount to being unreasonable or arbitrary or capricious.

We don't apply the policy against him and not another. It is acknowledged by the Court to be a private area. There is absolutely no state actions here for this free speech and due process claim that is put in. Both those violations required an answer,your Honor, to immediately the first question you asked, "Where is the State action."

It is not here, Judge Cannella. There is no State action involved in our refusing to publish this ad.

As far as the anti-trust claim goes, I tried to explain a bit earlier, your Honor, they are taking a cost item and not a very great cost item at that. Sure, we put repair expense into the PSC when we go for a rate filing, but this is not that type of situation. How do you transfer it into a business item? What sane bus-nessman goes out to increase his costs? There is no anti-trust violation here, not even the color of one, your Honor.

Against he has got the same thing of the State law monopoly. He is confusing our rendition of telephone service on the one hand with what is acknowledged to be a private enterprise on the other. We don't compete. We are not in the business of debugging or competing.

jwb [34]

By the way, I should add there is no debugging ad in our Yellow Pages or by anybody in our Yellow Pages except in error.

Incidentally, there were some remarks made about one of my clients, Mr. Bennett, that were really outlandish.

Plaintiff saw fit to attach some papers. I reviewed the case with Mr.Bennett in preparation of his affidavit. I said look at those ads. Do they seem to say what they say? He called and he was told they won't be in the next edition.

You can paint this very imaginary water color we get this morning, and Mr.Bennett picked up the phone and said you are hurting us in New York. Nothing of the kind. New York Telephone Company publishes its yellow pages. American Telephone & Telegraph does make recommendations about the contents. They are not binding on the company.

The Missouri Commission in the case I mentioned to you earlier found that to be so. So they are not binding. They are recommendations.

It does happen in this case that the Bell System, AT&T shares the same concern we do, New York Telephone, for privacy in communications. You don't transfer the

jwb [35]

concern for privacy, which you must recognize, your Honor, is a perfectly proper concern of the telephone company to have a real concern in this area and avoid the appearance of an impropriety fictitious term used in other circumstances.

We have a shared concern for privacy. You don't translate that into a Sherman Act conspiracy. That is just, with all respect to the plaintiffs' attorneys, your Honor, that is pure and utter nonsense. There is no conspiracy element involved here.

And much the same on the free speech claim that has been leveled.

Very briefly on the ani-trust matter, there are competing systems of equipment, non-Bell, non-New York Telephone. The Yellow Pages are full of their ads. We don't go out after competitors.

Another aspect about the plaintiffs' case, your Honor, he says that they apply this against competitors. I tried to give you an example where that is not so, it is nonsense. It has nothing to do with competition that is standard, because he emphasizes in his complaint that his client has the facilities to detect and remove illegal and unwarranted listening devices from telephones at home and offices.

He knocks out home and office, they don't do this. On the listings, he says they debug phones and we do.

If he can remove the word "telephone" from his ad, it would still be unacceptable. It has to do with State laws having to do with the sanctity and privacy of our company, and AT&T for privacy of communication.

He takes away all these imaginative cards on which the claims are built, State action and anti-trust, they are just not there. It is a private enterprise publication. He may disagree with our policy, but he can't set our policy for us, your Honor and he can't say we are doing it to him and not somebody else.

He is offering these pendant jurisdiction claims which are based on the same factualy allegations which simply don't hold a drop of water. What we have here, your Honor, is a situation where Reuben H. Donnelley, as the agent for disclosed principal New York Telephone Company, for the limited purpose of soliciting advertisements for the Yellow Pages, goes out and solicits ads. The customer presents on the form called the order for directory reception, a statement I would like to be listed, and he signs down below immediately beneath the statement attached to my own affidavit submitted today, your Honor, immediately

jwb [37]

beneath the statement that says-- you don't need a magnifying glass for it, your Honor -- I request representation or I request the listing in the Yellow Pages for the indicated boroughs, and subject to the terms and conditions listed on the reverse side of this form, which I have read.

You turn the form over and the reverse side is attached to the plaintiffs' complaint as Exhibit C, I believe, your Honor, and it says "I understand and agree," the plaintiff in this case.

Condition No. 12 says that the New York Telephone Company reserves the right to alter any representation such as we can detect and remove, etc., any representation submitted for listing as an advertisement in order to make it conform with the standards and policies of the company relating to the printing of telephone directories, classified directories.

So we have it right there. It is a simple contract case, your Honor. Those contract terms have been upheld, examined in the same cases, that whole line of New York cases that I mentioned to you earlier.

In October of this year, your Honor, I got a decision from Mr. Justice Hellman, across the street, in the State Court, and Judge Tenney just looking very briefly at the decision -- and this of course was a very short

jwb [38]

ordered hearing, said I don't know if that is on point. It is on point to this extent, Judge Hellman, in the State Supreme Court, just in October examined the very same opinion I am talking about, the right to alter and make it conform. We had a fellow who was in the crematorium business, he told us, and then we found out he wasn't through a client, and he gave the same service as other funeral directors did. We told him, under our services you just list it. He screamed and brought a restraining order and everything else.

Explained to the Court then we have this position, and it was upheld to avoid putting us in the situation of creating problems with the public or creating problems with other advertisers. That contract provision was lawful. It was recognized as such by Judge Medina in this Circuit examining similar conditions. We control our directories. As a matter of private contract, the plaintiffs agreed with their signature -- a copy of the signed affidavit is attached to my affidavit, your Honor -- They agreed we retain that control.

There is simply no case here. We have applied it in a manner that is not unreasonable.

I am not going to suggest it is something that the plaintiffs like. It is not. They said it is silly,

jwb [39]

but it is not legally unreasonable or arbitrary or capricious, so as to re quire this Court in the exercise of its jurisdiction to say I am going to substitute my judgment because they don't know what they are doing, they are being silly.

They are not, and the judgment should not be set aside. We reserve the right to make that judgment.

Your Honor, you have been very patient with me and I will bring this to an end. In order to grant this motion here -- I urge, your Honor, to dismiss the case, there is no case here. This is just made out of whole cloth, the whole business, but more immediately, your Honor, you have before you this morning a motion for a preliminary injunction.

In this Mr.Bennett's affidavit that is included with the defendants' opposing papers, there is a full set of papers setting forth the extremely demanding schedules under which these directories are published.

THE COURT: How often are they published?

MR. WALSH: Once a year, your Honor, and if I miss March 1st in the Bronx, there would be no listing that year. I understand the immediate concern with the plaintiff is with the Queens directory.

By the way, I think Mr. Bennett shows there

jwb [40]

are 13 or 14 of these for different neighborhoods in Queens.

THE COURT: Shouldn't the injunction only be as to the Queens director?

MR. WALSH: Your Honor, I must confess Tuesday night was a little more than confusing to me. I ran up to the Court and got the papers and found myself before Judge Tenney.

THE COURT: Is this all of them?

MR. LUCEY. All of them.

THE COURT: What sense does it make to enjoin the others?

MR. FINLEY: It can make a lot of sense, your Honor, because these same plaintiffs -- I would like to address myself, if the Court will grant me leave --

THE COURT: I will hear you a little later.

MR. FINLEY: These same plaintiffs would like to be able to make inserts into the other directories.

THE COURT: I don't know what they would like to do. The point of the matter is they haven't.

In any event, have you concluded your remarks?

MR. WALSH: With the exception, I don't dare suggest to the Court about the criteria of an injunction. We don't have the showing or irreparable harm, we have

jwb [41]

here a balancing of interests, your Honor, that comes out more strongly than anything else does against the plaintiffs. Again I wish them well in their business. Their suggestion that the Yellow Pages is the only road for them to take in getting their message through to the public is flattering, but it is not based on fact. There are other advertising media available to them. And this whole situation that we will be irreparably harmed, you can't get money damages, the Court will want it to go to the jury, that is just nonsese, they have got alternatives available.

The other thing on that score, Judge, there are literally millions and millions of dollars involved in the publication of a volume like just the Queens directory. I think the cost of printing there is $3 million in the Queens directory. The figures are set forth in the Bennett affidavit, your Honor, the revenues are greater than that. Those revenues are reported by us as part of the revenue of the New York Telephone, and serve to offset other service costs of rendering telephone service.

Here you have got three quarters of a million businessmen in the metropolitan area whose ads are ready to go and now we have these two plaintiffs who come in and say hold the presses. It is just not right. It doesn't remotely meet any test, your Honor, for the granting of

jwb [42]

a preliminary injunction.

So I ask the Court to grant my motion to dismiss this action in its entirety this morning. In any event, Judge Cannella, I would very much urge the Court to recognize there is absolutely no basis for the issuance of a preliminary injunction.

I have in my papers, to conclude, your Honor, recited in the events, which I hope is very remote, that this Court would grant such a preliminary injunction this morning, that an appropriate injunction bond under the governing cases which would limit our recovery in the event it were improvidently, under the way the order is now phrased, as I understand it, the bond would be $15 million. It is not an outlandish figure, it is not something I pulled out of the air to scare anybody. The figures are in the Bennett affidavit that I submitted to the Court, your Honor.

Finally, maybe it should be pointed here as the plaintiffs acknowledge in their papers -- and I am not trying to charge admission of any kind on their part here -- the plaintiffs will get an ad published. It won't be the ad they want. But if they want an ad published, we will be happy to publish their ad, just take out the words that conflict with our policy that we are entitled to have.

jwb [43]

Take those words out and I will publish it.

Finally --

THE COURT: You remind me of the special sessions. First it was finally, then peremptory, then double peremptory, then final finally. How many finals do you have?

MR. WALSH: I am finished now, Judge Cannella.

THE COURT: I will take a five-minute recess and I will hear you.

(Recess.)

MR. FINLEY: Your Honor, at this point I feel that I have shaken myself from a torrent of words that reduced to their simplest reflect nothing more than an intolerant position on the part of this defendant or these defendants, encapsulated in language carefully chosen by counsel, indicative of we don't just take ads like that, the patronizing attitude which is the same attitude that ten years ago was employed by the telephone system with respect to equipment connected at the subscriber's location to the incoming or the trunkline system in from the street of the telephone company, and they had resisted for years utilization of interconnect equipment on many grounds -- it wasn't as good as theirs, or that there was some potential for damage to the item, and so on.

jwb [44]

Finally we have seen what that brings us to, and I think we are going to see shortly the interface requirement where in order to have your interconnect equipment connected to their system, you have to have a device installed from your lines to their equipment.

On it goes.

The telephone company has cited the Arthur Katon article which is really interesting. I was surprised to hear of the approval of the good efforts and good work of Mr. Katon mentioned by counsel. In fact, Mr. Katon did exactly what he was supposed to do and I must presume that this plaintiff would do exactly the same thing.

To merely say that he gets a request five times as frequently as he does for removal of equipment, for the placing of bugging devices, and that he has the good grace, intelligence and wisdom and integrity to turn those requests down I think is commendable, and I don't see why our plaintiff should be any different than Mr. Katon whom the telephone company approves of.

I have heard the argument made that the telephone company is associated in the minds of subscribers to its service in terms of advertising in the Yellow Pages with the advertisers. Well, this is a deus ex machina that we are seeing here that arrogates to itself a position

jwb [45]

no other can attempt to approximate. The telephone company want to be independent of anyone else's judgment, no matter in what form it may be questioned, determine who may place what kind of advertising copy, and in the particular instance we are concerned about here, the presumption that they are correct and that the plaintiff is deemed in the minds of the public to be the one who will go out and place illegal devices and that the public be damned, because the public is presumed by this group of defendants to be preordained to seek that kind of service from this plaintiff.

THE COURT: What do you make of the New York cases which apparently have held this contract is a good contract and that they would sustain it. And if your reasoning is so, then they are silly because they haven't seen that this is a very stupid act on the part of the telephone company?

MR. FINLEY: We make short shrift of this contract claim. It is nothing but a lot of bunk. The fact is -- and this has not been dealt with by the defendants -- the very fact is that the exhibit to which reference was made, the alleged contract which I think has the most overwhelming language I have seen in a long while was in fact for the bottom half of the ad, it didn't contain the

jwb [46]

words in issue in this litigation.

THE COURT: Yes, but it gives them the right to change any words or do anything which was not in accord with their feeling as to what should be. If that was so, why didn't the New York cases say, look, this is a crazy contract, it shouldn't be sustained?

MR. FINLEY: There are many years they went the way this did. First of all, the Public Service -- one of the weakest agencies in the State -- if we want to talk about cases I have more problems getting the Public Service Commission to get proper telephone service for my law firm and the Public Service Commission about three years ago --

THE COURT: You are talking about your law firm against this company and as an advocate you should not indulge in personal observations.

MR. FINLEY: My brother tells me he likes the telephone, but the simple fact is we have a weak regulating agency that permits --

THE COURT: I don't want to cut you off in the sense that I think I would ordinarily do it. But you know we have another group of lawyers who are supposed to start at 11:00 o'clock. They have their witnesses here and I have been here since 9:30, as you know.

jwb [47]

MR. FINLEY: Yes.

THE COURT: Some of this is due to your own misinformation as to when the time was to start.

Will you conclude your argument?

MR. FINLEY: Yes, your Honor.

Getting it down to its essence, those New York cases had not a whit to do with antitrust. You can have ten million contracts, but if they violate the antitrust laws, they violate.

THE COURT: It is in the miasma of one of those southern swamps of a dead tree with moss hanging down. Where is your relevant market, where is the impact, where is some basis for it?

MR. FINLEY: Very simply, your Honor, the telephone company itself supplies the answer to that. We put out a subpoena for the production of books, records and documents which would permit the inquiry into relevant --

THE COURT: Go ahead. If you have anything to offer, any witnesses to offer, or any information to offer or anything else to offer which the Court may use for making a judgment in this case, I am prepared to take it and hear it.

MR. FINLEY: Your Honor, if that be the case, and I don't mean to engage in semantics --

jwb [48]

THE COURT: No, but you brought this suit.

MR. FINLEY: Yes, I know I did.

THE COURT: You have got this order to show cause. You at this point are saying in effect that you are prepared to go ahead on it and that we have the information upon which the Court can act. You show it to me and present it and if you have witnesses, I will hear them. It is as simple as that.

MR. FINLEY: If your Honor were to hear witnesses and to have documents introduced in evidence on a hearing right now, I would first want to make the observation that we have no proper motion under either Rule 12 or Rule 56 in connection with dismissal.

The only proper motion before this Court is the motion for the preliminary injunction.

THE COURT: You must show those three things which we all know are evident here. I will take anything you want, I will take any witnesses you want or anything you want to offer and I will rule on it.

This is what I am doing now. If you have anything else to offer, this is the time to do it.

MR. FINLEY: Your Honor, may I ask this: In that regard I would have to consult with the plaintiff and I don't mean to delay the orderly procedure of this Court.

jwb [49]

Would the Court be desirous of a brief adjournment of this matter so the Court may proceed with other business, so I can confer with counsel for the defendant to find out what they can produce pursuant to the subpoena?

THE COURT: I will reschedule it.

MR. WALSH: Your Honor, I object to any adjournment at this time. We are just getting delayed here. You asked the proper question, Judge Cannella, you brought this case, make your case.

THE COURT: I will give him a five-minute recess and see what he comes up with.

(Recess.)

MR. FINLEY: Your Honor, at this point I would ask of counsel for the defendants whether they have produced, pursuant to subpoena issued and served upon American Telephone & Telegraph Company and New York Telephone Company, any documents in response to those two subpoenas.

MR. WALSH: Your Honor, may we have for the record the date and time of that service?

MR. FINLEY: Yes, February 20, 1976, at 4:26 P.M. received by J. Cirpan, as endorsed on the face of this. AT&T --

MR. WALSH: Friday afternoon at what time?

jwb [50]

MR. FINLEY: 4:26 P.M.

MR. WALSH: And for New York Telephone?

MR. FINLEY: I believe, although I don't have the affidavit in front of me, I believe the affidavit of service would recite shortly thereafter or just prior thereto.

MR. WALSH: I wanted that on the record, your Honor, the subpoena on the New YorkTelephone Company was received at 5:25 P.M. on Friday, forwarded to me in the legal department. I picked it up on Saturday morning on my desk.

The subpoena that was served on New YorkTelephone Company, I am advised was received at New York Telephone & Telegraph, your Honor, at 4:50 on Friday afternoon I mention that because it is a procedure I suppose you can utilize in support of a time of adjournment hit somebody on a Friday afternoon, the matter pending from Tuesday afternoon, wait until Friday and then send out the subpoena. It is a time delay device that is being used here, your Honor. The subpoenas were improperly served insofar as the time. They were clearly not intended for any proper purpose but other than to try to force us into accepting the plaintiff's position, other than in trying to lay the foundation this morning for an application that we have

jwb [51]

been diligently at it, your Honor, and if they don't have the records, well, we served them. It may surprise counsel by and large people in the Bell System are off on Saturdays and Sundays. Nevertheless, having said what I did, your Honor, I did want to characterize those subpoenas for what they were, just an effort at some nonsense to create the foundation this morning for some application to delay.

Having said that, I call upon my colleague Kenneth J. Lucy, who is also of counsel for the defendants, in this matter, your Honor, who has with me, your Honor, spent the weekend, a good part of it, making a number of phone calls so as to avoid the possibility that we would even face any further adjournment of this matter.

Mr. Lucey can make a report to the Court, with your Honor's permission, on what was done with these subpoenas, what they seek. I did want to characterize them.

MR. LUCEY: If your Honor please, I first note that the subpoena addressed to American Telegraph & Telephone Company and the one addressed to New York Telephone Company are virtually the same in language. I do note that the language is broad, it is a real fishing expedition, and I would like to move that the subpoenas are quashed.

However, I did do this over the weekend. I directed my attention to those books, papers and documents,

jwb [52]

records, etc., that deal with cost projections and cost estimates.

If I understand what is meant by cost projections and cost estimates in this matter, it is the future estimates that New York Telephone and/or AT&T might have as far as its services that it renders to customers when it checks lines for the listing of wiretap devices.

I assume what they meant by cost reimbursement is how much money we get back for that. It discusses filings with the New York State Public ServiceCommission.

Let me say this: There are no -- in New York Telephone Company, no cost projections, no cost estimates, no cost reimbursements and no filing with the New York State Public Service Commission because these are not services. When a repairman goes out on a complaint of possible wiretapping, he says usually he hears noises, "I hear people talking, I get clicks, I think there is somebody listening." His time is reported as repair under 28R, and it goes into the maintenance budget station upkeep the same as if he went out and found a broken wire. I can have people here to testify, but that is what the people will testify to. That is where it is, it is not pulled out. It is really an insignificant part of our business. There are no records.

jwb [53]

THE COURT: How could you possibly think that the company could furnish records like this in an omnibus subpoena that you have here under such short notice?

MR. FINLEY: From the very fact this gentleman was in my law office on Saturday afternoon. He just indicated he and Mr. Lucey discussed it and there was no question raised as to whether or not there could be compliance.

THE COURT: They are saying now there can't be compliance, as I understand it.

MR. WALSH: Mr. Brashish asked me in a way that would characterize their whole approach to the case, "Did you find a subpoena?"

I said I found the subpoena on our desk this Friday morning.

THE COURT: Let me see it.

MR. LUCEY: May I have both subpoenas marked for identification, your Honor?

MR. FINELY: That is the AT&T. It doesn't say 4:50. It says 4:26, signed by someone on behalf of AT&T. What happened to it after it got there, I do not know.

MR. WALSH: This is the cover note sent to me. I am the "Pat," Patrick Walsh of the legal department to whom

jwb [54]

it was sent, your Honor.

(Plaintiffs' Exhibits 1 and 2, respectively, were marked for identification.)

THE COURT: They are received in evidence. They are the two subpoenas referred to and they have been marked.

(Plaintiffs' Exhibits 1 and 2, respectively, were received in evidence.)

THE COURT: As far as the New YorkTelephone subpoena is concerned, which is 1, I will take in evidence and marked it 1A, and show it to counsel for the petitioner. The claim is that this was the note that was attached to it when he got the subpoena.

MR. FINLEY: May I, your Honor, compare the signature with that which appears on the subpoena?

THE COURT: If you object to it, I will mark it for identification.

MR. FINLEY: I object.

THE COURT: All right, it is marked for identification.

MR. FINLEY: Do you want to kjow my reasnn?

THE COURT: I know the reason. It is hearsay. Do you think I have been sitting here for the last week or so?

jwb

[55]

xxx

(Plaintiffs' Exhibit 1A was marked for identification.)

MR. FINELY: The fact is this order was returnable today.

THE COURT: I find this opinion to be too broad and too extensive for a petitioner to come in here and knows on Tuesday that it is going to be on the following Monday, and submits it on a Friday afternoon. It is just nonsense to me. Therefore, I quash both subpoenas. If you were prepared to try this case, you should have done it before, you could have come in and done something about it. It just doesn't make any sense to give to a telephone company a subpoena which reads "Bring with you the books, the papers, the documents and any and all documents, correspondence, memoranda, internal records, cost projections, cost estimates, cost reimbursements, filings with the New York Public Service Commission or any other filings with agencies or commissions of the State of New York or the United States of America relating to surveillance, debugging, searches of customers and plant equipment for electronic eavesdropping and wiretapping."

No time period at all, it could have been from the year one. No indication at all as to what specific point is being involved here. No references to Queens,

jwb [56]

no references to anything. It is just nonsense. To expect a company to come in with these kinds of records on these kinds of notices, I don't fathom it. So I grant the motion to quash those two subpoenas.

Do you have any witnesses?

MR. FINLEY: I have an application at this time which I would forestall any further colloquy or polemics between counsel on this whole issue, and that is this: Obviously there is a very heavy burden on the part of the general public, at least this is the position of the defendants, that they do not receive classified directories for the various counties in either the City of New York, Long Island or Westchester. It is not the goal clearly and obviously of the plaintiffs to prevent the public from something that it believes itself it has a right to.

All this plaintiff seeks at this time is a very simple expedient resolution of this. And I don't think one must be a solon to realize this.

I think very clearly that this plaintiff should be entitled to have his ad inserted and that this is the issue that is submitted, and I would move that the defendants be preliminarily enjoined pending a final resolution of this action to take the copy which is patently innocuous, inoffensive and legitimate on its face, and insert it --

jwb [57]

THE COURT: That is granting you the ultimate relief. That is silly. You can't on a TRO get your ultimate relief.

MR. FINLEY: We have one coming up with a deadline of March 1, next Monday. All of the directories to which the plaintiff seeks to have insertions cover the Greater Metropolitan Area.

THE COURT: I don't know whether under this order to show cause you have spelled that out. I haven't read it with that particularity. It seems to me the only proof so far, sofar as I know, and from your argument, is the Queens directory.

MR.FINLEY: That was the burning issue.

THE COURT: It may be a burning issue or unburning, but the fact of the matter is that is the only thing that has been discussed.

MR. FINLEY: All right, I am prepared to call a witness at this time.

THE COURT: All right, call your witness.

MR. FINLEY: Mr. William Katz.

THE COURT: What is your offer of proof.?

MR. FINLEY: The relevant market in which this plaintiff seems to have the advertising copy placed in the Yellow Pages of the defendants.

jwb [58]

THE COURT: Which is what?

MR. FINLEY: He is going to testify.

THE COURT: You don't know?

MR. FINLEY: I have the same problem with semantics. The question was Greater Metropolitan New York area. I would like to elicit from this witness that area.

THE COURT: How would you establish him as an expert or any kind of a witness to make such a statement? The relevant market can be established by anyone that walks up to the courtroom? Is that the way you figure it out?

MR. FINLEY: It should be from the paper shearers.

THE COURT: Swear him in and let's hear where he gets his expertise as to what the relevant market is.

W I L L I A M K A T Z called as a witness by the plaintiffs, being first duly sworn, was examined and testified as follows:

THE COURT: What I think you are saying in effect is that it is his desire to publish in these areas.

MR. FINLEY: That is correct.

THE COURT: You say that establishes that is a relevant market?

MR. FINLEY: That is the relevant market in which this group of defendants is operating.

jwb Katz-direct [59]

THE COURT: Would you be willing to stipulate that he would testify that he wants to advertise in the Queens and the four other boroughs in the metropolitan area?

MR. FINLEY: Yes.

MR. WALSH: I would stipulate to that, your Honor, with the one statement that I came out with when I was finishing. The Manhattan directory has been published and delivered this year, your Honor. The Staten Island directory the same, published and delivered.

THE COURT: What we are talking about is Brooklyn, Queens and the Bronx.

MR. WALSH: Nassau, Suffolk, Rockland and Westchester. Is that it, counsel?

DIRECT EXAMINATION

BY MR. FINLEY:

Q Would you go up as far as Albany?

A No.

Q Would you indicate the counties in which you have your publication?

A The five boroughs of the City, Nassau and Suffolk and Westchester Counties were the markets.

Q Do you know of your own knowledge, Mr. Katz, whether there are any other regulated telephone companies

jwb Katz-direct [60]

supplying telephone service in those counties?

MR. WALSH: Objection, your Honor, the witness is not qualified.

THE COURT: Sustained.

MR. FINLEY: I would at this point ask the Court to take judicial notice of the fact there are no competing telephone companies in that county.

THE COURT: I can't refer to any document or location. Is it in the Encyclopedia, Civil Service Commission?

MR. FINLEY: Would the defendants stipulate there are no competing telephone companies?

MR. LUCEY: What do you mean by competing telephone companies?

THE COURT: Wait a minute. One of you talk at a time. Two lawyers at one time --

MR. LUCEY: I didnt hear the question.

THE COURT: But you know the answer. All right.

MR. LUCEY: Competing in what sense? There are many telephone companies in New York State.

THE COURT: Competing telephone books or what?

MR. FINLEY: The question I posed was whether or not the defendants would stipulate that there are no competing telephone companies regulated by the Public

Service Commission in the counties just recited by this witness as the market in which he wished to penetrate through resorting to advertising in the classified telephone directory.

MR. LUCEY: I would agree the New York Telephone Company is the only one that furnishes the telephone service in that area.

THE COURT: Anything else?

MR. FINLEY: That is sufficient. Any cross-examination?

Sorry, on that one issue.

THE COURT: Go ahead.

Q Mr. Katz, I ask you are you familiar or know of a corporation known as Dektor Corporation located in the State of Virginia?

A Yes.

Q Do you know a Mr. Allan Bell connected with that company?

A Yes.

Q Would you indicate who Mr. Bell is?

A Mr. Bell is the president of Dektor Corporation.

Q Have you received any special training in the discovery and removal of illegal wiretap or electronic eavesdropping devices?

MR. WALSH: Objection, your Honor, the witness is not qualified to testify as to legal, unless he is qualified with respect to the law, I would think.

THE COURT: It would seem to me that is a leading question to start off with, and therefore I sustain the objection.

MR. FINLEY: I withdraw the legal to satisfy the defendants and let the question stand.

A Yes, I received a course of training at Dektor in regard to technical surveys --

THE COURT: Raise your voice a little.

A Technical surveys, the use of their equipment and the technical background into detecting and removal of illegal service devices.

Q Specifically, with respect to --

THE COURT: I don't think the defendants claim he is not qualified to do that. That is not the basis of their objection.

Isn't that the fact?

MR. WALSH: We concede we don't know whether he is qualified or not, your Honor. For the purpose counsel is examining him, we will concede he is qualified --

THE COURT: That is not the legal issue here. So you have a concession he is qualified in this area.

Q Now, Mr. Katz, have you had an occasion to in any way inquire, make a survey or study of either the necessity or desirability on the part of the general public with respect to removal or detection of unwanted surveillance devices on telephone equipment?

MR. WALSH: Sorry, your Honor, I may have missed the end of that question. If I can have just the latter part of it.

THE COURT: Read the whole thing, Mr. Wolf.

(Question read.)

A Prior to --

THE COURT: That calls for yes or no.

A Yes.

Q Would you describe those efforts on your part, sir?

A Prior to going into the purchase of the equipment that we purchased for the services, I spent approximately one year going to five or six companies manufacturing such equipment and rendering such services as we presently render in this area. I discussed with each of them the need for the services, the market potential, the economic viability of such a business, the methods that they used for advertising, the results they got from different advertising media, and generally the viability of such a

venture.

Q Mr. Katz, did you have occasion to make a study of reports issued by the National Wiretap Commission in connection with the matter that you have just described?

A Yes, I did.

Q Would you particularly care to indicate any of the findings of National Wiretap Commission in connection with the necessity or desirability of suppressing illegal or unwanted wiretap equipment?

MR. WALSH: Objection, your Honor. We don't have the best evidence here.

THE COURT: Sustained.

Q Mr. Katz, did you execute an affidavit on or about the 21st day of February, 1976?

A I did.

Q Wherein you referred to certain studies and reports issued by the National Wiretap Commission in connection therewith?

A Yes, I did.

MR. FINLEY: Your Honor, at this point I would call the Court's attention to the exhibits attached to that exhibit which is now before the Court.

THE COURT: I will read it.

Q Mr. Katz, did you on or about Saturday, February

21, have a telephone conversation with Allan Bell concerning the substance of the Bennett affidavit which is now before the Court, and in particular I refer to the telephone conversation that Mr. Bennett had with a representative of the Chesapeake-Potomac Telephone Company.

A Yes, I did.

Q Did you advise Mr. Bell of the substance or did you read to Mr. Bell the Bennett and the McGarty affidavits which were joined together in opposition to the present motion?

A I read parts of it to him.

Q Was Dektor Corporation, of your own knowledge, the customer of Chesapeake & Potomac Telephone Company who had inserted the advertising copy in that classified director of Chesapeake & Potomac's which is referred to in the Bennett affidavit?

A Yes, they are.

THE COURT: Please, Mr. Katz, talk loud enough so we can hear you.

THE WITNESS: I will try to, Judge.

Q Mr. Katz, was that telephone conversation a conference call?

A Yes, it was.

Q Who else was on that telephone conversation?

A I, yourself and an employee of the Dektor Corporation whose name is Cindy. I don't know her last name.

Q Did you have occasion to hear from the individual whom you have described as Cindy, or from Allan Bell, a description by Cindy of her former employment prior to becoming employed by Dektor Corporation?

MR. WALSH: Objection, your Honor. It is hearsay, it is irrelevant, we don't even know who Cindy is.

THE COURT: Sustained.

Q Do you know of your own knowledge who this Cindy person was?

A I know her.

Q Please describe who she is and whether or not you know of your own knowledge if she had been employed by the Chesapeake & Potomac Telephone Company.

A Well, she is presently a sales representative --

MR. WALSH: Pardon me, I don't mean to interrupt the witness, but we have hearsay here.

THE COURT: Sustained.

Q Mr. Katz, do you know of your own knowledge the person described as Cindy whose last name you don't recall?

A Yes, I do.

jwb Katz-direct [67]

Q Do you know by whom she was employed prior to being employed by Dektor Corporation?

MR. WALSH: Objection, your Honor. It is hearsay.

THE COURT: I think it is entirely immaterial as well. Sustained.

It is definitely hearsay.

MR. FINLEY: Your Honor, at this point I am at an evidentiary impasse because I have got to get that woman here and get her testimony.

THE COURT: I don't know what you have got to do, but you can't get it in by hearsay, so let's get on with the next question of this witness.

Q Mr. Katz, in the course of your study or studies of the need for the counter measure services that you propose to provide and wish to advertise through the Yellow Pages in the County of Queens, did you have occasion to examine --

THE COURT: Well, not the County of Queens. He says he wants to advertise in all of them.

MR. FINLEY: I will stand corrected on that.

Q In the counties that you have referred to in your testimony, did you have occasion to examine any documentation provided by the New York Telephone Company or the

American Telehpone & Telegraph Company to the National Wiretap Commission concerning the number of personnel who are employed by the Bell System or the New York Telephone Company in detecting illegal surveillance mechanisms on their telephone equipment or lines?

MR. LUCEY: Your Honor, he said New York Telephone and the Bell System. Which is it?

MR. FINLEY: If you will bear with me, Mr. Lucey, I will find that testimony. I believe it would be the Bell System of which the telephone company is but one of 23 wholly-owned subsidiaries.

MR. LUCEY: And the question is how many security men are engaged solely?

MR. FINLEY: No. I would be happy to have the reporter read back the question because I didn't say security men and I didn't say solely. I said how many people are actually engaged --

THE COURT: Rephrase the question and start all over again.

Q The question, Mr. Katz, is very simply, have you any knowledge of your own from reading the testimony of E.William Caming,, attorney for the American Telephone & Telegraph Company as to the number of persons engaged in the discovery or suppression of unauthorized eaves-

jwb Katz-direct [69]

dropping equipment on the lines of the system?

MR. WALSH: Objection, your Honor.

THE COURT: Sustained.

MR. FINLEY: I call the Court's attention then to page 864 of the testimony of E. William Caming, which appear as an exhibit to defendants' affidavit where the telephone company, contrary to its representations here -- and I must treat the parent and subsidiary as one for the purpose of this discussion -- wherein Mr. Caming indicated and I quote "We have some 90,000 people whose daily work assignments are in the outside plant. They are constantly alert to unauthorized" --

THE COURT: How do you relate that to the relevant market here? What area is he talking about?

MR. FINLEY: I am now going to ask him if he is aware of that figure throughout the system. There are some 90,000 people, testified to by Mr. Caming. Has he any idea of the number of people of his own knowledge --

THE COURT: I don't know what you are going to do, but let's get on with it. You better put a question to him.

MR. WALSH: Your Honor, I don't mean to anticipate because if I can save interrupting later, the witness read Mr.Caming's testimony or whatever the exhibit

to his affidavit is, it is going, Number 1, to speak for itself. In any event, it is no proper foundation.

THE COURT: He wants to ask him to break that figure down.

MR. WALSH: I don't think he indicated that the witness intends to break anything down other than by reference to an exhibit to the affidavit. It is somebody else's purported testimony.

THE COURT: That may be so.

Q Mr. Katz, have you any knowledge of the number of telephone employees who are engaged in the detection of electronic eavesdropping devices on telephone lines or equipment in the market that you have described as that which you desire to penetrate through advertising in the Yellow Pages?

A No.

Q Have you any idea where that information would lie?

A With the defendant, New York Telephone Company.

Q Mr. Katz, in connection with your efforts to secure the desired advertising copy placed in the telephone directories of the defendant, New York Telephone Company, did there come a time when you had a conversation with a representative of the telephone company in connection

jwb Katz-direct [71]

with the alternative means or availability of advertising by which the public would come into possession of the knowledge that you had engaged in this material sought to be advertised?

A Yes, I did.

Q Tell us with whom you spoke and the substance of that conversation.

A I discussed that subject with three people from the phone company. The first was the salesman from Reuben Donnelley and his supervisor referred to, at a meeting at our office in New York City. And I later discussed the same subject with a gentleman who identified himself on the phone after, I guess, the third telephone call we had, as Mr.Bennett.

Generally in both conversations we discussed the fact that the alternative to Yellow Pages advertising were tremendously expensive, disproportionate to the reach and the market that we were going to be able to cover, and that we found no viable alternative as to advertising elsewhere to get the same coverage in reaching this market.

MR. WALSH: May I ask for a clarification, your Honor, is the witness testifying to what he indicated during these conversations or what was indicated to him?

THE COURT: He used a row of words.

jwb Katz-direct [72]

Q Amplify that, Mr. Katz.

A Specifically as to the salesman and the supervisor from Reuben Donnelly, they were the ones, specifically the salesman was the person who gave us all the relevant details on the reach and market involved in Yellow Pages advertising. The market and reach and the numbers were substantially higher than any other market we could reach to the tune of 10 or 12, 15 fold. There happened to be a selective market that we were very interested in.

Q Mr. Katz, I don't mean to interrupt your testimony, but you brought with you today an envelope or documents, among those documents are there any documents provided by the Reuben Donnelly representative to you in particular as to that market?

A No, I think the only material there with regard to Reuben Donnelly would be the contract and the insertion order.

Q Could you indicate to the Court what you recall being told by the Reuben Donnelly representative with respect to the size and reach of the market?

A Well, the --

MR. WALSH: Objection.

THE COURT: Overruled.

MR. LUCEY: Certainly not binding on AT&T.

THE COURT: If the agency is shown.

MR. LUCEY: Number 2, the agency is limited as to the further contract. The agency for New York Telephone --

THE COURT: I will take it subject to connection as to that.

A One of the figures that was repeatedly mentioned to us and was pointed out as being even advertised in the Yellow Pages book itself that we were looking at was that they had a nationwide reach of 92 million people. We discussed other area advertising.

THE COURT: You mean the Yellow Pages in Queens would reach 92 million people?

THE WITNESS: No, Judge, I thought I said nationwide, this was their reach, 92 million people.

THE COURT: How do they do that? The Queens Yellow pages are reachable to 92 million?

THE WITNESS: The figures aren't broken down to that area, I assume all the yellow pages controlled by the Bell System.

THE COURT: We are not talking about that. Your ad wouldn't reach people in San Francisco or in Florida or any place else, would it?

THE WITNESS; We hope it would.

THE COURT: The yellow pages here in Queens are going to reach people in other STates?

THE WITNESS: Yes, I believe I can be told what I have been told by Reuben Donnelley.

THE COURT: I have been all over the country and I haven't seen a Queens Yellow Pages book in Florida, San Francisco, Maine. I have been all around. How do you get these things? I don't understand it.

THE WITNESS: Well, if I may elaborate on it, in our business we have need for other Yellow Pages. We call up our business office, who send us Yellow Pages. I have my office in Chicago, Atlantic City, Houston, among others.

THE COURT: You say according to that 92 million people could reach the Queens Yellow Pages?

THE WITNESS: I am not saying that, Judge. The figure presented to us as the possible reach, what we described as the broad spectrum of Yellow Pages advertising is 92 million people. It is certainly greater than the market area we were choosing. But I believe the question was what figures and what kind of discussions we had with the representative.

THE COURT: I think that was in a different

light, in the light of figuring out how much you had to spend for an alternative rather than the implication you are assuming.

THE WITNESS: I can discuss that if that is what you are interested in.

THE COURT: I am only saying that is what I think the lawyer was trying to develop.

Q If you would, Mr. Katz, please.

A Specifically along that line and for the most part in figuring out the alternatives, this came to pass after we were told we couldn't advertise in the Yellow Pages. We looked into the mini-directories which are published outside of the telephone company. We also looked at the mini-directories published by the telephone companies, but then realized they were also prohibited from taking our advertising. We found out that the Yellow Pages published or the Green Book, which is referred to in one of the affidavits, is a controlled circulation directory that would not give us even similar reach with the Yellow Pages.

The directories are distributed by direct mail, they are distributed under a mailing list that has to do with certain criteria, not necessarily all subscribers. They would not be distributed to all telephone subscribers

in the area and the cost if we were to assemble in the case of the Green Book, to assemble all of the areas available still not covering every possible part of the borough, it would be more than the single ad in the Queens directory which the telephone company markets.

We then looked at newspapers and other advertising again and ran up a budget just for the purpose of making a reach to a small segment. We looked at the Law Journal, we looked at the Times, we looked at the Wall Street Journal. We consulted with people that we knew had had experience in these fields, and we determined that to go anywhere near the same kind of reach that we were getting -- and I can talk merely about the Queens book, getting to every subscriber in Queens -- the possibility would be substantially more than 200 times the dollar value that would cost us to get into Yellow Pages, which makes it completely impractical under our -- I think under everybody's criteria -- under our criteria.

MR. WALSH: Your Honor, I object and move to strike the last part of the statement about the impracticality, that is purely conclusory.

THE COURT: Yes, strike that part.

Q Mr. Katz, in connection with the conversation with the representative of the Reuben Donnelley Corporation,

jwb Katz-direct [77]

did you discuss with that representative a desire, or an interest on the part of the firm to place advertising copy in directories other than those in the counties we are now discussing?

A Yes, we did.

Q In connection with that aspect of your conversation, would you please tell us what the representative said to you and what you said to the representative?

THE COURT: What relevance does that have, if you say the relevant market you are interested in is this market?

MR. FINLEY: Your Honor, I wanted to tie it up with the 92 million and the fact that there is control over the entire market of advertising copy.

THE COURT: Then you are expanding the market. Which is the market? If he is going to insist on this 92 million, then you better go into the relevant markets and that would be part of the relevant market.

MR. FINLEY: One aspect we have to show is that there is a good likelihoood of success in the ultimate, if I am not mistaken. This is one of the three propositions.

THE COURT: That may be so, but we still have to face the relevant market question. What is the relevant

market? If you are going to take all three, that is it. If you are going to take Queens and the other counties he has described, then that is it. But you have got to establish, to my satisfaction, the relevant market.

MR. FINLEY: Then I will come back to the conspiracy aspect between AT&T and the New York Telephone which is what I was leading up to at this point.

Q All right, Mr. Katz, did you undertake to follow subsequent to the meeting with the Donnelly representative, the methods for determining the availability of the type of service that you have suggested in the testimony of Mr.Caming, which Mr. Bennett had referred to in his affidavit, namely, all the national means, and, if so, what in fact did you do?

A I am really not clear.

Q If it will help you, in your affidavit you referred to telephone calls that you had made in order to establish whether or not one could learn of your type of service some alternative means from that proposed by the defendants.

A Well, it was suggested in the testimony that I read, Mr. Caming's testimony that you could call the Better Business Bureau, the Chamber of Commerce, the Police or FBI and get a referral in hopes if that did exist we could

subscribe to their referral service. I called each of them and although I don't have my notes in front of me, without an exception none of them referred to any private companies. Each, except one, referred to the New York Telephone Company. And one referred to the Police Department. When you called the Police Department, they -- as a matter of fact, the FBI and I think it was Better Business Bureau, suggested I look in the Yellow Pages.

Well, the test was to see, and specifically I asked them if they would refer, if we could show them -- and they said they weren't interested, it wasn't their business. And particularly the Chamber of Commerce wanted to know if we were members, if we wanted to join. And the Better Bureau Bureau wanted to krow if we had a complaint against somebody.

The FBI suggested the phone company. And I called the phone company, by the way.

Q What was the result of that call?

A Well, I called the phone company's main office in Manhattan. I shouldn't say main office, the number that is listed in the phone book. I think it was 2121-- and I asked for somebody that I could talk to about this kind of a service and I was referred to a woman in the security, who said she wasn't the right person,but I should call

jwb Katz-direct [80]

another number, which I called. And I got an agent in the security department of the phone book, who advised me that he was unaware of any outside services, but that I could call repair service of the telephone company and that they would be happy to check out my telephone and telephone lines.

And that was the nature of my inquiry.

Q Mr. Katz, have you had any training in discriminatinb between illegal and legal wiretaps? And if so, would you describe that and indicate what to your knowledge constitutes an illegal and what constitutes a legal wiretap?

MR. LUCEY: I object.

THE COURT: I think it is immaterial in view of the stipulation. This area of it is not in dispute, it is not the legal basis for the objection.

Q Mr. Katz, would you indicate, please, what --

MR. FINLEY: Withdrawn.

Q Did you discuss with the Reuben Donnelley representative the cost of the advertising that you wished to place in the Queens County directory?

A Yes, we did.

Q Was it your intention to place the same advertising copy in other directories in counties that you have mentioned earlier in your testimony?

A Yes, it was.

Q Did you discuss with the Reuben Donnelly representative the cost of placing that advertising copy in the Queens directory?

A Yes, we did.

Q Did you discuss with the representative of Reuben H. Donnelley the cost of placing that advertising in the other directories you have mentioned in your testimony?

A You mean other telephone company directories?

Q The other counties, the other yellow pages.

A Yes, we discussed all -- we discussed the entire budget.

Q Would you please indicate now what the substance of that discussion was and what the dollar amounts were that you recall in connection with the advertising that you wished to place?

THE COURT: In view of the fact I don't think your claim is that the charge was so exorbitant that it was prohibitive, I think it is immaterial.

MR. FINELY: Judge, if I may, I would like to address myself to that.

THE COURT: I assume they were going to charge him something. The point of the matter is, it doesn't

make any difference what they were going to charge him. It is irrelevant.

MR. FINLEY: It does, because in connection with the market he wanted to be in,there isn't any other available medium of access on the part of telephone subscribers or anyone else.

THE COURT: What has the dollar amount to do with that, assuming that is so?

MR. FINLEY: I don't want to offer testimony on behalf of this witness, but the phone company has a lock on the cheapest means of distribution on the type of information his advertising copy represented.

THE COURT: I don't see the relevance of it, though. You are not saying that he could go and get it for less or not. What difference does it make what the charge was unless it was confiscatory?

MR. FINLEY: Not the question of confiscation, we are not concerned with that.

THE COURT: Go ahead and ask him the question. I am going to disregard it, I will tell you, because I don't think it is relevant.

MR. FINLEY: If you will take it subject to linking up.

THE COURT: Go ahead. How much was it going to

cost?

THE WITNESS: The proposed budget for metropolitan New York and its immediate suburbs was a thousand dollars a month.

Q For the total cost over a year?

THE COURT: I can multiply a thousand by 12. I know what that is.

Q Did you have occasion to compute what the same or similar coverage, if not as much coverage for each in those counties that you have mentioned would cost using the other available means suggested by Mr. Bennett in his affidavit?

MR. WALSH: Your Honor, I object at this point. The computation being called for I respectfully submit to the Court would require expertise.

THE COURT: He is not being asked that, he is being asked what Reuben Donnelley told him.

MR. WALSH: I didn't understand that. I thought he was asked if he computed, not Reuben Donnelley.

THE COURT: As I understand the question, Reuben Donnelley told him to use alternate means and then it was a matter of finding how much the alternate means would cost. Suppose you start again.

Q Mr. Katz, in connection with your discussions

with the Reuben Donnelly representative -- first of all, was there a discussion of the economic preference or desirability to advertise in the Yellow Pages as opposed to alternate means of advertising?

A Yes, there was.

Q Tell us what the substance of that conversation was and if there was a discussion as to -- and I caution you on this -- if there was a discussion as to the cost of advertising in these Green books or green pages or blue books or blue pages, please address yourself to that and explain what was represented to you by the Reuben Donnelley representative?

A Well, we in that area discussed the fact that Reuben Donnelley, representing the phone company's Yellow Pages, had a reach into every home, every home that had a telephone and all the public places where the telephone company kept its telephones, etc. And the figures that they used -- and it is really hard to remember precisely -- the figures they used were in the millions. We sat down and we figured out this and this is with the representative from Donnelley, that the cost per content, relevant content, was in the fractions of a penny per day, and the alternate to that was in a much higher dollar value -- dollars per daily contact.

jwb Katz-direct [85]

Q Did the Donnelly representative make any representations to you as to other means of access to your type of advertising being more expensive per contact or on any other basis than the Yellow Pages?

A Yes, he did. That was part of the entire presentation as I recall.

Q Can you elaborate or expand on that and tell us, please, what the Donnelley representative said to you?

MR. LUCEY: I would just like to note a continuing objection to anything the Donnelley people said, your Honor.

THE COURT: Yes, it is only binding on Donnelley at this point unless I find there is agency, in which event I will make a further finding.

A The entire gist of their sales presentation was that for each dollar that you would spend in Yellow Pages, you would get so many multiples of that dollar were you to spend it in another media. The criteria was used, how else could you reach every doctor, every lawyer, every -- it was part of their presentation.

THE COURT: Did you buy it?

THE WITNESS: Yes, I did.

THE COURT: Didn't you think there was a little puffing about this? 92 million didn't impress you at all?

THE WITNESS: I would like to clarify the 92 million. They said all the reach they got throughout the country through their books, which I think if you break it down to this market area, was an impressive figure.

THE COURT: Yes, some salesman, I will tell you that.

Q WAs there any discussion then, Mr. Katz, as to the number of telephone subscribers who would receive these Yellow Pages, for example, in the Borough of Queens or in the Borough of Manhattan?

A Well, in Queens they were talking about, as I recall millions -- two million, a million and a fraction. It was over a million, as I remember it.

Q Was there any discussion as to the number of people that could be reached by Yellow Pages in the Borough of Brooklyn?

A Well, we didn't get specific in each borough, but the general impression was that there were millions of people being reached on a daily basis.

Q Where?

A In Queens and throughout the rest of the market area.

Q Which market area?

A The five boroughs, Westchester, Rockland,

Nassau and Suffolk Counties.

Q I want to turn to the question of Reuben Donnelley. How did Reuben Donnelly come to visit you at your offices as you testified?

A I called them up on the phone.

Q Whom did you call up?

A I called up -- there is a number listed in the Yellow Pages to call Reuben Donnelley, that they are the sales representatives, I believe it says, and we called them.

Q Did you place any telephone calls to a business office at the telephone company in order to secure the attendance of a Donnelley representative?

A No.

Q Did the Donnelly agent or representative who came to your office indicate the nature of the agency that Reuben H. Donnelley Corporation has or enjoys with respect to New York Telephone Company?

A Yes.

MR. WALSH: Objection, your Honor.

THE COURT: Sustained. You can't prove agency out of the mouth of the agent.

MR. FINLEY: May I have a moment, your Honor?

THE COURT: Why not?

MR. FINLEY: Thank you.

jwb Katz-direct [88]

(Pause.)

THE WITNESS: Judge, can I hand him something?

THE COURT: Hand him whatever you want.

A Mr. Finley (handing to counsel.)

MR. FINLEY: Your Honor, I would like to show this card to counsel and then offer it.

Your Honor, I would offer at this time for identification and then to be marked in evidence, two cards, solely for the printed matter on the obverse, not with regard to anything on the reverse of the card.

MR. LUCEY: Your Honor, as to the Finnegan card, it is apparently a business card of Reuben Donnelley and I make the same objection. As to the defendants' business card, I have an objection. It is not binding on AT&T.

MR. WALSH: I think there may have been some confusion. As to Joseph Bertinetti, they are both Reuben Donnelley, are they not?

THE COURT: Yes. All right, I will take them subject to connection.

xxx

(Defendants' Exhibits C and D for identification were received in evidence.)

Q Mr. Katz, with respect to the two exhibits which have been marked at this time, are they the calling business

cards of the representatives of Reuben Donnelley Corporation who came to see you?

A They are.

Q Would you indicate on how many occasions, if you can, from those cards that you had conversations with representatives of the Donnelley Corporation?

A I met with their representatives three times on three separate occasions.

Q You testified as to how you had the first meeting with the Donnelley representative. How did the subsequent meetings come about?

A Well, the second meeting where Mr. Bertinetti was present at our office was as a result of my requesting the wording in the ad that they found objectionable, and Mr. -- it is Bertinetti, I believe, it was a supervisor who came up to discuss it with us. At that meeting we discussed the ad, the prohibition. He refused to give me a copy of the matter and I told him that I had spoken to Mr. Bennett who said he was going to send us a copy of the regulation,which Mr. Bennett did.

I discussed with Mr. Bennett on the phone that afternoon theproblem we were having with Donnelley, hoping that he could mediate and in fact he told me to wait until early the next week when he would get back to me

with a final decision which he ultimately did, and I then met after that with Mr. Finnegan again for the purpose of placing a different ad than the one that they had rejected, so that we wouldn't get closed out of the book.

MR. FINLEY: Your Honor, I would like to know at this point whether the defendants will stipulate that the Reuben H. Donnelley Corporation is the exclusive sales representative in New York of the telephone directories with respect to the classified directories.

MR. LUCEY: No, I will stipulate as to the back of the agreement, the order, which is attached to the defendants' papers.

MR. WALSH: The stipulation, counsel that you may have is that which appears on the order for directory representation, which is annexed to the complaint as Exhibit B, wherein it recites, "The directory advertising sales representative of the New YorkTelephone Company identified on the applicant's copy of this order is authorized by the New York Telephone Company and the Telephone Company publishing the directory in which the representation is ordered if other than New York Telephone Company to" -- and I am le-ving out the hereinafter -- "solicit units of representation in telephone directories published by the company," being the New York Telephone Company.

jwb Katz-direct [91]

We will stipulate that Reuben H.Donnelley is authorized on behalf of New York Telephone to solicit units of representation in telephone directory published by the New York Telephone Company, but is not authorized to agree to insert the units ordered or to bind the company in any manner whatsoever not expressly provided for herein.

That is the order for directory representation and we will stipulate to that, your Honor.

MR. FINLEY: Well --

THE COURT: The point of the matter is they want their authority limited according to their agreement. Naturally, if they are acting within the scope of their authority, then they would be binding the telephone company.

Q At this point I would like to ask Mr. Katz if he is familiar with this document. If so, I would like to have it marked.

A Yes, I am.

xxx (Plaintiffs' Exhibit 3 was marked for identification.)

MR. FINLEY: I want to have the witness testify with respect to this.

THE COURT: It is not in evidence. Are you offering it?

jwb Katz-direct [92]

(Pause.)

MR. LUCEY: I have an objection to the page that isin the middle. I have no objection to the first page and third page.

MR. FINLEY: Your Honor, if I may, I would like to have the witness tell us of his own knowledge if he has it what the middle page represents so we can deal with the objection. I myself am uninformed as to what the middle page represents. Although I know the middle page does have language on the back that was read by Mr. Walsh earlier in connection with what he claims the stipulation to be.

I further represent to the Court I wish to elicit from the witness --

THE COURT: Lay a foundation for the middle page, if you can.

Q Mr. Katz, I ask you to look at this collection of documents, which have been marked as Exhibit 3.

THE COURT: For identification.

Q For identification, and I ask you to address yourself to the middle page.

Have you had an opportunity to study it? Can you tell us how that middle page came into your possession?

MR. LUCEY: That is the one without any signature

on it.

MR. WALSH: Or date.

MR. FINLEY: Correct.

Q And it has the serial number A7283199.

A Yes, when my partner, Mr. Triebwasser and I signed the contract to insert our ads into the Yellow Pages we also, as part of the package that we bought, contracted to insert them into the mini-directories that are locally disseminated in Queens, Elmhurst and I believe it is Middle Village.

The second sheet here represented that insertion and the package price which was then included in the contract that we signed and was executed --

THE COURT: On the first page?

THE WITNESS: That is correct, Judge.

A And was executed by Mr. Finnegan. He wrote everything in while Mr. Bennett sat across the --

THE COURT: On the second page?

MR. WALSH: Bertinetti.

A Sat across the table as he did this.

THE COURT: On the second page?

THE WITNESS: Yes, Judge, he filled out all the pages. All we did is sign them.

MR. LUCEY: Except the second page.

MR. WALSH: A brief voir dire, your Honor.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. WALSH:

Q WEre all three sheets taken care of at the same time, was this at one sitting, those three sheets?

A Yes.

Q Does the signature on behalf of your firm appear on the first and third page?

A It does, yes.

Q Whose signature is on the first page, Mr. Katz?

A My partner, Mr.Triebwasser.

Q And on the third, sir?

A His.

Q Did he have authority to sign on behalf of the firm?

A Certainly.

THE COURT: I will receive it with an exception to the defendant, all three pages.

xxx (Plaintiffs' Exhibit 3 was received in evidence.)

BY MR. FINLEY:

Q Mr. Katz, in connection with the second page to which reference has been made as having no signature on

jwb Katz-direct [95]

behalf of your firm appended, is there a reason why there is no signature?

MR. LUCEY: I object to that. That calls for a conclusion.

THE COURT: Sustained.

Q Did you discuss with the representatives of the Reuben Donnelley Corporation the absence of a signature on that page?

A Yes.

Q Would you tell us what was said and by whom in connection with the absence of the signature on that page?

A The Reuben Donnelley salesman said"you don't have to sign that. It appears the amounts appeared on the order that you are signing."

Q Was there any other discussion in connection with the lack of signature thereon?

A No.

Q Is your answer no?

A No. My answer was no.

Q Mr. Katz, with respect to the language which appears on the back of the first and second page, which was read by Mr. Walsh before into the record -- and, Mr. Walsh, correct me if I am wrong, I think it was Paragraph 1--

jwb Katz-direct [96]

MR. WALSH: Paragraph 1, I believe, is the paragraph I read, counsel, in response to your request for a stipulation.

Q Did you discuss with the representatives of Reuben H. Donnelley the substance of Paragraph 1 that appears on the reverse of that first and second page now marked as Exhibit 3?

A Yes, we did.

Q Would you tell the Court what the nature of the conversation was, who said what to whom?

A Well --

THE COURT: Wait a minute. It seems to me before he can do that you will have to lay a foundation that there was authority to go outside the contract agreement between the parties.

MR. FINLEY: Judge, all I want to do is sharpen the issue on the question of this specific paragraph which has been offered now as a stipulation as to the extent or limit of the authority of Reuben Donnelley.

THE COURT: That is the point, though, can Reuben Donnelley or anybody else change that contract unless there is a provision that allows the change.

MR. FINLEY: I am not arguing at this point.

THE COURT: It would be in violation of the

parol evidence rule.

MR. WALSH: With regard to Paragraph 14 in the same contract --

THE COURT: Yes, it says you can't change the contents unless in writing.

MR. WALSH: It says the company is not responsible unless in writing, your Honor.

THE COURT: Lay a foundation. I haven't read the contract, but it would seem to me anybody who drew up such a contract would include such a clause. It would violate the parol evidence rule.

Q Mr. Katz, in connection with the contract and the discussion you had with Donnelley about your advertising copy, did Donnelley make any representation to you as to an objectionable nature of an advertising copy? Did Donnelley says to the representatives that you could not have all or a portion of your advertising copy inserted?

A Yes, they did.

Q Would you please tell us about that conversation and if that conversation in any way entrenched on the language of that Paragraph 1, would you please explain what was said and by whom?

A Well, there was a series of conversations, the first one being with Mr. Finnegan in which he told us

that after consulting with his supervisor that he couldn't accept the wording in our ad --

Q Let me stop you right there. What wording are you referring to?

A I am referring to the wording that I referred to, detection and removal of the kinds of surveillance devices. And he said this was not their policy, but the phone company's policy and that I would have to talk to his manager or supervisor if I had any other questions. And then we met with Mr. Bertinetti and we discussed it again and they said -- Mr.Bertinetti said it is not their policy, but it is Bell System policy, and I would find the same thing would hold through throughout the system, but if I wanted to explore it further I was free to go to anybody I wanted to.

I mentioned Mr. Bennett, that I had spoken to Mr.Bennett previously on an unrelated matter, and I went back to Mr. Bennett that afternoon. Mr. Bennett, as I understand it, is not with Donnelley, though, he is with the telephone company.

Q What was the substance of the conversation with Mr. Bennett following the discussions with the Donnelley representative.

A Well, he said that Donnelley couldn't change

the rule, that they could only sell me the ads, and that he would inquire above, to people in his company, and that he would get back to me Monday of the following week. And when I spoke to him Tuesday of the following week, he said that he was sorry that he had to tell me that they would not accept the ad and that there was no possible way for him to accept it with any of this kind of objectionable wording.

He told me he was sending me a copy of the prohibition, which he did send to me.

We discussed some order books that might have had the similar ads in. We discussed generally the problem that I saw arising out of the fact that we couldn't get our ad into the Yellow Pages as we wanted them.

Q Mr. Katz, you indicated that you received some material from him?

A Yes.

Q I show you a group of documents. Is this the material that you referred to?

A This is a photocopy of the material that he sent to me in response to my request on the telephone.

Q Do you have the originals from which these photocopies were made with you here?

A I believe I may have this covering letter in my

jwb Katz-direct [100]

portfolio.

MR. FINLEY: Your Honor, if I may have a moment.

(Documents handed to witness.)

(Pause.)

MR. FINLEY: Your Honor, if you want to know how much longer it may be, I think only another five or six minutes.

THE COURT: With that material there may be room to stipulate because I think their position is stated there. Show it to them.

THE WITNESS: Pardon me, I found --

MR. LUCEY: Yes, we will stipulate that was the material sent to Mr. Katz by Mr. Bennett.

MR. WALSH: The four pages counsel is now handing the witness.

MR.FINLEY: If counsel will stipulate we will mark the copy.

MR. LUCEY: Surely.

xxx (Plaintiff's Exhibit 4 was marked for identification.)

MR. FINLEY: Judge, the witness has the original if you would care to look at it.

THE COURT: That is all right. I can understand it.

jwb Katz-direct [101]

MR. FINLEY: Your Honor, I would also like to have marked two documents which are copies of advertising copy which were submitted to the telephone company. The first reads "We can detect and remove unwanted and illegal electronic listening devices from your telephones, home or office."

xxx (Plaintiffs' Exhibit 5 was marked for identification.)

MR. FINLEY: And the second is a similar document, but this indicates "Call date" telephone number to the right and in both places "Investigators" and further material below.

MR. LUCEY: The first one was rejected, not the second one, is that correct?

THE COURT: I would suspect 6 was not rejected, yes.

MR. FINLEY: I don't know in which form.

xxx (Plaintiffs' Exhibit 6 was marked for identification.)

Q Mr. Katz, you indicated that you have received the material which has now been -- the original of the material now marked as Exhibit 4. What did you do after you received that material?

A Frankly, nothing but consult counsel. This

material came after the rejection of all of our ads.

Q With respect to --

MR. WALSH: Did you say the rejection of all your ads?

THE WITNESS: Yes.

THE COURT: Was 6 rejected, too?

THE WITNESS: It was rejected -- well, if I may explain, Judge. The initial advertising was to contain -- and I believe if I may, the ad was attached to the affidavit or the complaint, Judge, indicates the ad I am showing you now with the legend which was rejected.

THE COURT: You are indicating 5?

THE WITNESS: That is correct. What happened was, Judge, 6 and 5 were at one time one ad, that to accommodate the phone company's regulations we deleted -- actually what happened, Judge, they wouldn't even accept this for submission to the phone company. Donnelley's representative wouldn't even take this back to the phone company. Half of the first ad which were the deletions and we submitted these two ads instead. However, at the time I received this we --

Q Referring to which?

A I am sorry, the material from Mr.Bennett.

THE COURT: Exhibit 4.

THE WITNESS: That is correct, Exhibit 4. We had no proposed ad and we were still struggling with the idea of what ad we would place.

This is all within the period of a few days.

Q Did there come a time when you submitted the original of what is now marked Exhibit 5 to the telephone company for approval or insertion through Reuben Donnelley in the classified pages?

THE COURT: He didn't do it in that fashion, as he just got through explaining to you. It was all done at one time and then he separated them.

MR. FINLEY: That is the point. Exhibit 5 is the separated portion.

THE COURT: It wasn't even taken to the telephone company, so they rejected it.

THE WITNESS: Not exactly. Subject to their telling me they wouldn't even take it to the telephone company, I think Mr. Bertinetti, the supervisor, said he was willing to accept a photostatic copy of both halves of the ad, not for the purpose of taking it as an ad. He refused to fill out an ad application for it. But for the purpose of being able to convey to his supervisor. At that time we were hopeful they would accept the ad once they received it.

jwb Katz-direct [104]

THE COURT: Finally they rejected 5.

THE WITNESS: Yes, Judge.

Q Was that why the second page of this collective exhibit does not have a signature because it was the only thing submitted?

A No.

THE COURT: That was the green book. This has nothing to do with this. The middle page has nothing to do with this. It is the green and blue book.

MR. FINLEY: I withdraw the question.

THE COURT: You understand they would have taken 6 alone, as I understand it?

THE WITNESS: They in fact did take a modified 6.

THE COURT: All right, a modified 6, I understand.

MR. WALSH: I may have my numbers mixed up. I have Plaintiffs' 5 --

Q Did you have conversations with Mr.Bennett about the allegedly undesirable aspects of the advertising copy which has now been marked as 5?

A Yes, I did.

Q Would your testimony in any way be different from that which is encapsulated in your affidavit which is now before the Court concerning that discussion with Mr.

Bennett?

A No. No, I don't think so, except I am not sure I went through a great deal of detail as to that conversation in particular.

Q Would you amplify that discussion with Mr. Bennett?

A Well, this would be I believe the third phone call I had with Mr. Bennett at which time he told me that they were finally rejecting the ad, that he had obtained a copy of it, I believe, from Mr. Bertinetti, that the wording was unacceptable.

We discussed the wording of the prohibition which he was to send me. We discussed the theory behind it as I understand it, and as he understood it. He told me it was now the unalterable position of the phone company's and the decisions involved in it were far beyond his ability to make any changes or anybody within his company to make changes.

And we discussed the possibility of having to go to an attorney and he said that he had discussed it with his attorneys and that they said they were unalterably opposed to a change, something about that,and that they were willing to defend against the lawsuit.

And I told them, "You are leaving me very little

choice but to go a lawyer."

And he said, "Yep," and that was it.

MR. WALSH: Your Honor, I object to the various elements of hearsay contained in that statement. And the suggestion that he was reluctantly forced into bringing the suit.

THE COURT: All right, the jury is instructed to disregard that statement.

MR. WALSH: Thank you, your Honor.

Q Mr. Katz, did you at any time have occasion to discuss the nature of the problem that you encountered with respect to this advertising copy with any employee of American Telephone & Telegraph Company?

A Mr.Bennett.

MR. WALSH: Your Honor, to clear the record the witness answered Mr. Bennett to answer to a question about AT&T. The papers identified Mr.Bennett as a 15-year old employee of the telephone company not AT&T.

Q Mr. Katz, did Mr. Bennett ever address himself to you as a representative of AT&T in addition?

MR. LUCEY: I object to the leading.

THE COURT: Sustained. You can't prove agency out of the mouth of an agent anyhow, even in the face -- that he is in the face of the sworn affidavit that he is not.

Q Mr. Katz, did you have any discussion with anyone to your knowledge who is a direct representative of AT&T concerning this entire matter or any aspect of it?

A No, I did not. No.

MR. WALSH: No?

THE WITNESS: No.

Q In any discussion with Mr. Bennett as a representative of the New York Telephone Company, was there any discussion with respect to the applicability of the rejection for the Queens directory to any of the other directories that you were desirous of placing a copy in?

A Well, he said it would apply to every one of the directors published by the New York Telephone Company, and any of the other directors published by the Bell System as far as he knows.

MR. FINLEY: At this time I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. WALSH:

Q Sir, when did you retain counsel to bring this lawsuit, Mr. Katz? What date?

A I believe it was the day after I got the final rejection from Mr.Bennett.

Q Did you get a final rejection from Mr. Bennett after you received his letter sending you this standard?

A Well, I got the final rejection from Mr. Bennett on a Tuesday, I received the letter on a Wednesday and that day I believe was the day I came to the lawyer's office with it.

MR. FINLEY: Objection as to relevance.

THE COURT: He already answered. I am not going to strike that.

Q Sir, you indicated, I believe, in your direct testimony, that you had training at Dektor.

A That is correct.

Q Is that a company in Virginia?

A Yes.

Q Do they run training programs for electronic surveillance or the detection of electronic surveillance?

A They run training programs in counter measures which would be the broad term used for the detection and prevention and protection of illegal eavesdropping.

Q Is it a classroom type of arrangement, sir?

A It is in part.

Q Are there Government employees in attendance from the Federal Government at that seminar?

A At the time we were there it was five people

from the New York area. To my knowledge none of them were there as a representative of any agency of the Government.

Q You know enough about Dektor to have gone there for the class and to know that they do what they do, that they teach this course that you took there, sir?

A They teach that course and other courses.

Q Do you know if they have any central intelligence agency students at that place?

MR. FINLEY: Objection on the ground of relevance.

THE COURT: I don't see the relevance.

Sustained.

Q Mr. Katz, after that course did you have any training with the State of New York in any investigative function in this area of expertise?

A No.

Q Did your partner, Mr.Triebwasser, to your knowledge?

A I don't know.

Q WAs your partner, Mr. Triebwasser, ever employed on the staff of Maurice Nadjari?

A Yes, he was.

Q Until when, sir?

MR. FINLEY: Objection.

MR. WALSH: I am trying to develop the exper-

jwb Katz-cross [110]

tise of the witness.

MR. FINLEY: We didn't want it in before. It is wholly irrelevant.

THE COURT: As I see it, according to this contract, they have a right to look into these things and if they don't feel a person is qualified like the crematorium fellow, they can say look, you are not going in here.

MR. FINLEY: I object on the lack of foundation. If they wanted it they should have done it before. Instead of fooling around on the content of that contract, they could very well have asked those questions. Now they are using this forum --

THE COURT: Overruled.

Q Did Mr. Triebwasser work for Mr. Nadjari?

A Yes.

Q Do you know of your own knowledge whether the expertise he developed was in the field of detection and removal of electronic devices?

MR. FINLEY: Objection.

THE COURT: That calls for a simple yes or no answer, and I don't know what it can possibly indicate.

Overruled.

Q Answer the question.

A Repeat the question. I assume that would be

detection removal.

Q Yes, of electronic eavesdropping devices.

A The only training I know of personally --

THE COURT: Don't tell us what you know. Can you answer that question yes or no?

A In connection with Nadjari's office, no.

Q Do you know in connection with his work for the Special Prosecutor Nadjari, Mr. Triebwasser, your partner, developed any expertise in the placement of any eavesdropping devices?

MR. FINLEY: Objection. This counsel is now trying to bring out something he was blocked from doing. That is not the issue.

THE COURT: Overruled. I will just take a yes or no answer.

Q Sir?

A Could you repeat the question?

Q Did your partner, Mr. Triebwasser, in connection with what you know to have been an association or a working relationship with theSpecial Prosecutor's office of Mr. Nadjari, did he in that capacity, sir, develop, to your knowledge, any expertise or facility in the placement or installation of electronic listening or eavesdropping devices?

A Not to my knowledge.

THE COURT: Where did he obtain any expertise? I don't care who he did it for. In other words, is he a shoemaker that now wants to go in and put these devices in? What to your knowledge is his background and experience?

MR. FINLEY: Your Honor, I object to the line of questioning, because the questioning presupposes an answer that hasn't been given. If he wants to know whether this man or his partner have the capacity to remove, detect or suppress, that is the legitimate inquiry.

THE COURT: That is the special line of questioning I am allowing in.

MR. FINLEY: He is going into assumptions with his questions that in fact the other gentleman has the capacity to install them not remove them. I would like his inquiry limited to that.

MR. WALSH: On the contrary, I am fully entitled to go into the area of whether or not they have the capacity to place or install such listening devices. It is the plaintiffs in this action, your Honor, who have said it is absurd to suggest those who can take them out can put it in.

THE COURT: I will allow it. He knows as far as

he is concerned whether he did or not.

A What you are asking -- I am sorry, I lost it.

Q My question -- I believe you answered it, no, you don't know whether or not Mr.Triebwasser developed any expertise in his work for the special prosecutor in the placement or installation of electronic eavesdropping devices, is that correct, sir? You do not know?

A That is correct.

Q May I ask you, Mr. Katz, other than the training that you had at the Dektor facility in Virginia, did you have any other training in the field which you now wish to enter?

MR. FINLEY: Which is the detection and removal, not placement.

A Talking about debugging now, counter measures. If it is counter measures, I have been to Dektor on a number of occasions. The only place I had any formal training other than general investigative experience as relates to counter measures would be at Dektor on the numerous occasions I have been there for training.

THE COURT: We will suspend at this time until 2:15.

(Luncheon recess.)

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jwb AFTERNOON SESSION [114]
2:15 P.M.

W I L L I A M K A T Z resumed.

CROSS-EXAMINATION (continued)

BY MR. WALSH:

Q Mr. Katz, just by way of refocusing your attention, if I may, please, we were discussing some of the training thatyou had, sir, and I believe most of that was with Dektor.

A That is correct.

Q Were you there on more than one occasion, sir?

A Yes, I was.

Q Did all the courses you took, sir, involve what you told us about earlier, the development and training for the detection and removal of eavesdropping and listening devices?

A That's right.

Q And did that include such things as room sweeps?

A Yes, it did.

THE COURT: I don't want to go into any great detail on this because you stipulated that he is an expert in this area, as I recall the beginning of this. It seems to me any great exploration here won't be of any help to the Court.

MR. WALSH: Fine, your Honor, I accept the

Court's instruction and admonition in this regard.

Q I ask this: Do you, Mr. Katz, possess the ability by reason of your training and your expertise in the detection and removal of listening devices, do you know, sir, by reason of that same training or experience how to place such a device?

MR. FINLEY: Objection, it is wholly irrelevant.

THE COURT: I will allow it.

A I could only speculate.

Q I am talking about you, sir.

A Yes.

Q Do you know how to bug a place, sir, do you know how to bug a room or a phone?

MR. FINLEY: Objection.

THE COURT: Let him answer the question that was originally put.

A I don't know if I could in fact accomplish the task.

THE COURT: What is so very complicated about bugging a phone? You know electronics. You got the bulbs, you put the wireon them and what is the big deal?

THE WITNESS: A simple wire tap, if that is what you are talking about, yes, obviously I think I could accomplish that. In the area of any kind of specific

sophisticated -- I don't know what you have in mind, you know, it is a multitude of different things.

Q Just for example, sir, would you know how to place a listening device in a room such as the one we are now in?

A I would say I probably could, yes.

Q You do know, sir, do you not, by reason of your acknowledged area of expertise, how such things are often placed in rooms, phones, or homes?

A Yes, I do.

Q In your conversations, Mr. Katz, with representatives of the Reuben H. Donnelley Company, sir, it was from a representative of Reuben H. Donnelley that you received advice for the first time, was it not, that your ad would not be published in the form you wanted it, isn't that correct, sir?

A Well, no, they -- yes, I guess you can say that.

Q Who would publish it?

A Supervisor.

Q Bertinetti?

A Yes, he was the man who made the decision.

Q And he told you about it?

A What he told me was he would not accept the ad for submission to New York Telephone.

Q Did representatives of Donnelley at another stage tell you that this wasn't their policy, this was New York Telephone's policy?

A Yes, they did.

Q And you understood what they were talking about when they said that, sir, is that correct?

A Yes, I believe I did.

Q Did you in any conversation with any representative of Donnelley say in words or substance or indicate to them your desire to have that ad published and your willingness to go to suit about it, to have it published, if not this year, then next year?

A We may have talked about going to suit in the meeting with Bertinetti.

Q The plaintiffs in this case are Triebwasser and Katz, and you are Mr. Katz?

A Yes.

Q Did they include you or mostly you or him?

A Mostly myself.

Q Was there a direct contact between you and your partner, your fellow plaintiff, Mr. Triebwasser, where you indicated to representatives of Mr. Donnelley that you were not going to accept their advice, you were going to sue?

A Yes, as I recall it was Bertinetti and Finnegan who said, to use their words as I remember them, that this was a final determination and we could of course sue New York Telephone or Donnelley, but that this wouldn't change anything that we would do.

Q Is that Bertinetti or Finnegan?

A No, the conversation I am talking about now was in the conference room on the seventh floor of our building where we were sitting there and I was discussing with Bertinetti and Finnegan the fact that I thought it was a terrible thing that they were telling us that they were going to reject the ad. And they sort of threw up their hands and said, "This is all we can do, anything else you want to do, you can go to New York Telephone Company or you can sue."

Q They indicated there was nothing they could do about it?

A Yes.

Q Did you at that time or in some such conference with them, did Mr. Triebwasser, your partner, say in words and substance, "We are going to pursue this issue and if we don't get it in this year, we will get it in next year, or we will at least try to get it in"?

A I don't know if we said we would sue, but it

certainly within our minds to go as high up in the company and if that didn't work to pursue it any way we could.

Q You and your partner went into this about the first of this year?

A That is correct.

Q He with his background and you with yours?

A That is correct.

Q Do you know when the partnership agreement was signed?

A I believe we signed the partnership agreement December 4 or 5, and took it down to the clerk here in the County Clerk's office, and proceeded to find office space, you know, and contract for telephone service, for instance, and other things, got stationery printed and began t actual operation of the business January 1, got our license some time after that.

THE COURT: This is interesting, but can't we get on something that is relevant to what I have to determine?

MR. WALSH: Yes, your Honor.

Q Sir, did you and Mr. Triebwasser, your partner, in performing your business, did you have clients lined up or something you were ready to begin right away?

A We have clients.

jwb Katz-cross [120]

Q YOu have some that are clients of the firm of Triebwasser & Katz, private investigators?

A Yes.

Q Did you have them before, during or after this meeting or series of meetings that you had with Reuben H. Donnelley about this proposed ad?

A Yes, we had clients during that time.

Q Can you tell me how some of them came to you, sir? I mean, were there referrals or picked up in an ad or how they came to you?

A Well, one of them -- are you talking about general business or counter measures? The only counter measures job we have gotten as a partnership was gotten through a company that advertises in Ann Arbor, Michigan Yellow Pages. It is my understanding somebody called them through the Yellow Pages ads.

We had other investigative jobs, but none in the area of counter measures.

Q Before I go any further, sir, I show you a document. I represent to the Court and to your counsel and to you that I have pulled it from a true Xerox copy or true photostat of the verified complaint in this action to which it was annexed as Exhibit A.

MR. WALSH: Let me show it to your counsel first.

Excuse me, Mr.Witness.

MR. FINLEY: I have no objection.

Q Is that the ad you wanted published, sir?

A That ad is basically the ad we wanted published. It is not the one we wanted published as it originally appeared, but it contains the objectionable wording, and basically we would be very happy to get this ad in. This is the ad we would like to submit.

Q Isn't that the ad that was rejected?

A Not exactly, but substantially, sir, yes.

Q Sir, I show you the complaint in this action -- and maybe I don't even have to go that far -- do you recognize that as the ad that was annexed as an exhibit to your complaint, as the ad that you wanted published?

A Yes. If I may just tell you. I don't want to be picayune, but there was a word taken out by the phone company which is the word "the." That is the only change between the original ad and this ad, the deletion of the word "the."

Other than that it is exactly the way it began.

Q Where did the word "the" occur?

A After "call" and before "investigators."

Q In its original form it was "Call the investigators."

MR. WALSH: Your Honor, I offer this.

THE COURT: It is part of the papers.

MR. WALSH: It is Exhibit A annexed to the plaintiffs' complaint in this action. Is that so stipulated

MR. FINLEY: So stipulated.

THE COURT: You know, you originally told me you were going to take seven minutes. It was seven minutes to 1:00. You ran over 1:00 o'clock and now you hav gone 12 or 14 minutes. How much longer have you?

MR. WALSH: No further questions.

BY MR. LUCEY:

Q When you were at Dektor, studying, did they tell you how to get into the central office of the New York Telephone Company and find out whether the telephone was bugged at that point?

MR. FINLEY: Objection.

THE COURT: I will allow it.

A No, they did not.

Q Did they ever teach you how to trace a telephone line from the central office to the subscriber or your customer and find the place of appearances so you could find out whether there was a bug on it at that point?

MR. FINLEY: Objection.

THE COURT: Overruled.

A No, I don't believe that was covered in the course that we had there.

Q You know what an appearance is on a telephone line?

A Yes.

MR. LUCEY: No further questions.

REDIRECT EXAMINATION

BY MR. FINLEY:

Q Mr. Katz, you referred to having a single reference from a company in Ann Arbor, Michigan, is that correct?

A That is correct.

Q And you mentioned that -- you didn't identify it by name. Do you recall the name?

A I believe it is Counter Measures Systems, Security Systems or Counter Measure Security Systems.

Q I show you this document. Does this refresh your recollection?

A Yes, Counter Measure Securities Systems.

Q The answer is yes?

A Yes.

THE COURT: Mark it. It is used only to refresh his recollection.

xxx (Plaintiffs' Exhibit 7 was marked for identification.)

jwb Katz-redirect [124]

MR. LUCEY: It is in the moving papers. I don't think it is binding on me.

THE COURT: I don't care if it is a tombstone. It is only used to refresh his recollection. All I am doing is keeping the record straight as to what he looked at.

Q With respect to this document now marked for identification, did you discuss this with anyone from the New York Telephone Company?

A Mr. Bennett.

MR. LUCEY: I didn't hear the answer.

MR. FINLEY: Did he discuss this document --

MR. LUCEY: The ad in the Michigan Bell Telephone directory?

MR. FINLEY: Yes, with anyone from the New York Telephone Company, the content or this specific document. Did you discuss it with anyone?

THE WITNESS: Mr.Bennett.

Q Would you relate the conversation that ensued between you and Mr. Bennett concerning this particular ad?

THE COURT: Sustained.

Q What did Mr. Bennett say to you and what did you say to him?

THE COURT: No, I am not going into that. This was only used for one purpose by the defendant and it wasn't used for the purpose you are going into. So it is not proper redirect. This is your witness.

Q Mr. Katz, have you or your firm been subjected to any disciplinary proceedings by virtue of having been accused of engaging in any unlawful activity relating to wiretapping or eavesdropping?

A No.

MR. FINLEY: At this time I have no further questions.

MR. WALSH: No questions, your Honor.

MR. LUCEY: No questions.

BY THE COURT:

Q When you went into this business did you project what possible profit there would be on a yearly basis?

A Yes, we did.

Q Did you project it on items that you had in mind, for example, do you furnish other services other than counter activity?

A Yes, Juege, we are in the general practice of private investigation.

Q That means surveillance of people and things like that also?

jwb Katz- [126]

A Also the work that we do is litigation-oriented for the insurance industry, Judge.

Q And --

A Or for attorneys.

Q How much of your business did you think you were going to devote to counter activity?

A We anticipated approximately 50 to 60 per cent of the business would be counter measures.

Q How much did you anticipate as far as the general profit over the course of the year?

A From counter measures?

Q No, the whole thing. You have two people employed and other employees, how much did you figure?

A Our anticipation for the first year's revenues is approximately 40 to $50,000.

Q And as far as the counter measures are concerned, since you said it was about half, you would anticipate about half profit from that?

A It is 60 per cent or about $30,000.

Q You base that on certain information that you had as to the possibilities of profit in this area?

A We based it primarily on the experiences of those other companies that we studied.

Q And you had figures on which to go?

jwb Katz- [127]

A Yes, we did, Judge.

THE COURT: All right. Anything else?

MR. WALSH: Your Honor, may I just have a stipulation from plaintiffs' counsel that the --

THE COURT: Wait a minute, no stipulations yet. The petitioner has the case at this point. We will get to you as soon as he says he is finished.

MR. WALSH: Surely.

No further questions.

THE COURT: You may step down, Mr. Katz.

MR. FINLEY: I have no further questions. I only have argumentation which won't take very long.

(Witness excused.)

THE COURT: You have no witnesses to produce or desire to present any additional evidence?

MR. FINLEY: No.

THE COURT: All right, back with the respondent.

MR. WALSH: The only point I wanted to mention was to have a stipulation from the plaintiffs that the ad marked Plaintiffs' Exhibit 6 in evidence, I believe it is marked in evidence, your Honor, is an ad that would be published by New York Telephone Company.

THE COURT: Well, that is the assumption that I made. 6 would be published, but 5 would not.

jwb [128]

Anything else?

MR. FINLEY: No, your Honor.

MR. WALSH: No, your Honor.

THE COURT: The respondent rests?

MR. WALSH: Respondent rests, your Honor.

THE COURT: Petitioner rests?

MR. FINLEY: I only wish to move that the documents marked for identification be now deemed in evidence.

THE COURT: I think we marked everything that is admissible.

Any objection to 4, 5, 6 and 7?

MR. LUCEY: If he is offering in evidence anything from the other telephone companies, Michigan Bell, I object.

THE COURT: I don't know what he is offering.

MR. FINLEY: Yes, I include Michigan Bell.

MR. LUCEY: It is not binding on American Telephone & Telegraph Company.

THE COURT: It is taken as to Donnelly and subject as to connection to American Tel.

MR. WALSH: With respect to Plaintiffs' Exhibit 4, since it is in 4, may we have it, Mr. Katz or his attorneys have it, the covering letter that was sent?

THE COURT: I thought you rested now. Do you

jwb [129]

want to reopen the case now?

MR. WALSH: No, your Honor. Withdrawn.

THE COURT: They are received in evidence.

xxx (Plaintiffs' Exhibits 5, 6 and 7 for identification, were received in evidence.)

THE COURT: I don't know there need be much argument here. There is plenty of need for thought. What I intend to do is read the papers and after I look at the papers and look at my notes and make a judgment on the matter, I will hear you if you want want to be heard.

MR.FINLEY: Yes, your Honor.

Your Honor, I don't want to flog a dead horse or browbeat the issue, but certainly --

THE COURT: What is interesting here is that he apparently is able to fix damages here.

MR. FINLEY: He is.

THE COURT: Yes. That is one of the three main things. If you can fix damages you are out of your TRO and he says it in so many mathematical words here.

MR. FINLEY: There is another approach that I think is fair.

THE COURT: The equity between the parties. I understand that.

MR. FINLEY: Your Honor, I already made an

jwb [130]

application in the motion for a mandatory judgment requiring them to print in the Yellow Pages pursuant to a copy he would describe as his desire pursuant to the contract. The point I want to make is these defednants have in no way been able to establish that anyone would be damaged. Absolutely not a shred or scintilla of evidence.

From all the testimony here and all the documents here, there is no testimony that anyone would be damaged by this Court's direction that they carried the ad in the manner proposed.

THE COURT: It is not a question of whether they were damaged or whether the plaintiffs would be damaged and the damages are irreparable and unascertainable.

And that is not the fact here, the damages are ascertainable.

MR. FINLEY: Your Honor, in the case of balancing the equities, there is no harm to this defendant or these defendants --

THE COURT: I am not talking of balancing of equities at that point. There are three things you have to show us. One is you are suffering irreparable damage.

Where is the irreparable damage? The man can tell you in dollars and cents what he is up to.

MR. FINLEY: He can to a certain extent, but

this is --

THE COURT: I am going to charge the jury on what he said on his damages.

MR. FINLEY: I heard his testimony and I believe that the witness was absolutely candid, but I also think it is fair to observe that here is a fledgling company, that they haven't even had a chance to get out, haven't had a chance to be published, haven't had a chance to have advertising copy inserted which would permit them to establish what their position in the industry is.

THE COURT: Damages are fixed continuously by juries, fixed for pain and suffering, fixed for all kinds of wierd things, fixed for cancer phobia, fixed for almost anything you can think of. And as long as they are ascertainable, they are not irreparable, and I am sure the telephone company can pay any damages assessed by any jury in this District.

MR. FINLEY: Just go right back up to Albany and get an approval on it in next year's budget.

Your Honor, as I said to the Court earlier, I am trying to be absolutely candid, their intention and their desire is not to work a harm on the public and not to work a harm, however they construe it to be, against the telephone company by suppressing or preventing the publica-

jwb [132]

tion in the disrectories.

THE COURT: Yes, but you would have to satisfy them on that because as far as I am concerned I am only facing the law in the case and if they want to go along with you on this reasoning and say all right,we will take this ad, well and good, they can do it tonight.

MR. FINLEY: I have asked them that and they arbitrarily said no, no, no.

THE COURT: It isn't arbitrary. It is a policy they are adopting, thinking whenever you put ads like this in this kind of communication, it brings thoughts to the minds of people which in their opinion interferes with the public's privacy and that the first thing you know, although these fellows may be 100 per cent legitimate and they are willing to accept that, there are some that will not.

Then you have a situation, how can they make fish out of one and fowl out of another by saying to the one fellow, we will take your ad because it is legitimate, but not the other, because you may be like the other --

MR. FINLEY: Your Honor, I would much prefer to state that I believe -- although I am not an expert in gauging it -- there might be harm by publishing in the directories the palintiff wishes to have his ad placed in.

jwb [133]

But also at the same time I must say that a reasonable man could not possibly conceive of adequacy of motivation for prevention of its ad if this court were to say "New York Telephone Company, take the man's ad, put it in there, you have no study, no empirical basis, not a shred of anything."

THE COURT: But you have the burden. You are coming in and now you want to reverse the burden. No, that is not the way it runs. Unfortunately sympathetically I am inclined to go along with the feeling that they should be allowed to do this, but then I would be passing judgment on something which I have no particular knowledge of, and which the company apparently does have, some prior history of these things and even the article you say they were stupid to cite indicates there are people they see something which says we will debug your phone, immediately think well, maybe they can bug one for us. I don't know if you are wrong or right, but that is not the issue here. The issue is you have got to prove those three things and one of the elements is the damages.

You can't do it because damages are not irreparable here according to your own plaintiff's testimony, petitioner's testimony.

MR. FINLEY: Concededly the receipt of income

is quite a different animal from the damage to real property and we have been getting away from that in this State.

THE COURT: The jury can ascertain it with proper instruction here.

MR. FINLEY: Again, your Honor, I would move that this Court has it precisely within its power and within the framework --

THE COURT: I can only tell you that I will read your papers, reflect on it. I am only giving you my off the cuff opinion at this time. I don't even know myself what I will end up with at this time, but I will know tomorrow.

MR. FINLEY: May I ask the Court's indulgence with respect to the second -- well, with respect to the substance of the complaint. I haven't had anything like an adequate period of time to prepare a memorandum. May I submit one?

THE COURT: The defendants didn't bring this action and even though you are personally at a loss here because of something that you had nothing to do with, and somebody else prepared, and you came in with, that is unfortunate, but what is the request you are making of the Court?

MR. FINLEY: That I be permitted to provide

jwb [135]

the Court with some law in connection with the second and third causes of action because the question was raised earlier about the instrumentality of the telephone company under the 1963 claim, and I certainly would like to be able to address myself to that and to the pendant jurisdiction claim.

MR. WALSH: Your Honor, I have no intention of interrupting anybody. The complaint alleges those complaints. The complaint was lodged Tuesday. I have had a lousy week, as I am sure all counsel in this case have had, but I had this complaint and had to deal with it.

THE COURT: I will give both sides until tomorrow at four o'clock to submit anything you want to submit. As soon as I get the papers, I will read them and then I will make a judgment which probably won't be until Wednesday morning.

Thank you, gentlemen.

MR. FINLEY: I have nothing further.

MR. WALSH: Thank you, your Honor.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TREIBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiff,

- against -

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION,

Defendants.

----------X

AFFIDAVIT OF TRANSCRIPT CORRECTIONS

76 Civ 770 (JMC)

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

PATRICK F. WALSH, being duly sworn, deposes and says that he makes the following corrections to the transcript of hearing held February 23, 1976, in the within matter, all of which involve only statements made by him at such hearing:

Page	Line	Now Reads	Should Read
16	10	Cashley	Ashley
17	12	dealing for a	deal with the
17	20	appendant	a pendent
17	22	basically	baseless
17	24	merits	motion
19	21	McLean today	Medina
20	1	evidence	effort
"	"	similar	simple
20	20	abided	applied

Page	Line	Now Reads	Should Read
21	4	debugging	debugging business
21	7	guys	ads
21	19	In that	That
22	7	983	1983
22	21	don't say	don't accept ads which say
22	25	innocuous	controversial
23	1	case of looking	case of an ad about looking
23	6	don't you	we won't
23	8	policy	text
23	11	public	publish
24	18	so far	ads for
25	4	system	sense
26	7	advertise	install
28	2	legal	illegal
28	4	did it	died
28	5	sentence	sentence on eavesdropping convictions
31	21	leaders	readers
33	8	required an	so require, in
33	21	against	again
"	"	of	on
33	22	monopoly	monopoly issue
33	25	competing	competing for such business

Page	Line	Now Reads	Should Read
34	3	ad in	ad by us in
34	8	papers	papers to its moving affidavit
34	11	called	called to inquire
34	14	and	that
34	16	kind	kind occurred
34	19	company	New York company or other companies
35	5	ficticious	If I may use a
35	15	equipment	telephone equipment and services
35	17	competitors	competitiors to exclude them
35	21	competition that is	competition, that
35	24	at	or
36	1	they	since we
36	2	On the listings	In the allegations
36	6	sanctity and	sanctity of
36	7	of our company, and AT&T	and our company's and AT & T's concern
36	8	He takes	We take
36	9	claims	federal claims
38	5	opinion	condition
"	"	alter	alter an ad

Page	Line	Now Reads	Should Read
38	9	services	standards
38	10	you just list it	you can just be listed under Funeral Directors
38	10	brought	sought
38	12	Explained	we explained
38	12	position	condition
40	24	suggest to	instruct
41	8	situation	claim
41	9	you	we
41	10	want it to	not let it
42	9	events	event
42	13	improvidently	improvidently granted
50	12	subpoena	identical supoena
50	14	New York	American

Hereto annexed is a copy of the hearing transcript in question with each of the aforesaid corrections shown at the appropriate page and line.

Sworn to before me this
12th day of March, 1976

J. Michael Brown

J. MICHAEL BROWN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-4[illegible]34
Qualified in [illegible] County
Commission Expires March 30, 1977

Patrick F. Walsh

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

TRIEBWASSER AND KATZ, a Partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiff,

-against-

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLY CORPORATION,

Defendants.

----------X

ORDER

76 Civ. 770 (JMC)

CANNELLA, D.J.:

Plaintiff's motion for a preliminary injunction is granted.

The defendants are enjoined from refusing to accept plaintiff's advertisement (attached as Exhibit A to the Complaint) for publication in the Yellow Pages on the ground that it does not comply with the internal operating procedures attached as Exhibit C to the Complaint.

This matter will be set down for trial at the earliest date which is mutually convenient to the parties.

The plaintiff shall post a bond in the amount of $10,000 by 5:00 P.M., February 26, 1976.

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The Court will not grant a stay pending appeal.

Findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure will be filed shortly.

SO ORDERED.

John M. Cannella

JOHN M. CANNELLA
United States District Judge

Dated: New York, N.Y.
February 25, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

TRIEBWASSER & KATZ, a Partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiffs,

-against-

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION,

Defendants.

----------X

AMENDED ORDER

76 Civ. 770 (JMC)

CANNELLA, D.J.:

The Court's order dated February 25, 1976 is amended as follows:

The amount of the bond to be posted by the plaintiff is reduced from $10,000 to $5,000, and the deadline for the posting of that bond is extended from 5:00 P.M. on February 26th until 3:00 P.M. February 27, 1976. If a bond in the amount of $5,000 is not posted by that time, the preliminary injunction previously granted will automatically be dissolved.

SO ORDERED.

JOHN M. CANNELLA, U.S.D.J.

Dated: New York, N.Y.
February 26, 1976
4:30 P.M.

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

TRIEBWASSER & KATZ, a Partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiffs,

-against-

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION,

Defendants.

----------X

OPINION

76 Civ. 770 (JMC)

CANNELLA, D.J.:

Plaintiff's motion for a preliminary injunction is granted. The defendants are enjoined from enforcing the policy of the New York Telephone Company ("N.Y. Telco") embodied in the document attached as Exhibit C to plaintiff's complaint to the extent that such enforcement requires the defendants to refuse to publish plaintiff's advertisement, attached as Exhibit A to their complaint, in the Yellow Pages.

FACTS

The plaintiff in this case, Triebwasser and Katz, a partnership which was recently formed to engage in the business of a licensed private investigator, attempted

OFFICE COPY Feb. 26/76

to place an advertisement in the Yellow Pages for the County of Queens which included the phrase "we can detect and remove unwanted and illegal electronic listening devices from your telephone, home or office." They were informed by representatives of the New York Telephone Company (the owner and publisher of the Yellow Pages) and of Reuben H. Donnelley Corporation (N.Y. Telco's sales agent for purposes of soliciting advertisements to be placed in the Yellow Pages) that the above advertisement was unacceptable in that it conflicted with N.Y. Telco's internal standards and practices governing the acceptability of ads for the Yellow Pages. In relevant part, these internal standards provide:

> "ELECTRONIC", "ELECTRIC", "MODERN", AND SIMILAR AMBIGUOUS WORDS OR STATEMENTS
>
> The use of ambiguous phrases such as "Electronic", "Electric", "Electro", "Electronic Equipment", "Modern Aids", "Latest Devices", "Scientific Methods", "Technical Equipment", "Secret Equipment" may imply, and could readily be understood by directory users to imply that wiretapping, bugging, eavesdropping or debugging equipment is employed or is available.
>
> Consequently, these words or phrases may not be used in copy unless they are qualified with additional, specific descriptive information that clearly discloses that a purpose other then [sic] wiretapping, bugging, eavesdropping or debugging is being advertised.

On February 17, 1976, the plaintiffs moved by way of order to show cause for a temporary restraining order and preliminary injunction. After a hearing before Judge Tenney, a temporary restraining order was issued which required the defendants to make a quarter of a page available in the Queens Yellow Pages for the plaintiff's ad with the understanding that if the preliminary injunction was denied the plaintiffs would nonetheless insert their ad, but that it would appear without the offensive language.

At the hearing on the preliminary injunction the plaintiffsoffered proof to substantiate their claims that the defendants' actions were violative of the first amendment rights of the plaintiffs, and were unlawful under 15 U.S.C. § 1 and § 2.

THE LAW

It is well settled in this circuit, that a preliminary injunction will issue "only upon a clear showing of either (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting preliminary relief." Sonesta

Int'l Hotels Corp. v. Wellington Associates, 483 F.2d 247, 250 (2 Cir. 1973). Accord, Missouri Portland Cement Co. v. Cargill, Inc., 498 F.2d 851, 866 (2 Cir.) cert. denied, 419 U.S. 883 (1974); Gulf & Western Industries, Inc. v. The Great Atlantic & Pacific Tea Co., 476 F.2d 687, 692-93 (2 Cir. 1973).

The Court finds that the plaintiffs have satisfied the above standard in that their claim under Section 1 of the Sherman Act raises very serious questions going to the merits and the balance of hardships tips decidedly in plaintiffs' favor.

Under Section 1 of the Act conspiracies in restraint of trade are illegal. The facts before the Court indicate the existence of an intracorporate conspiracy which unreasonably interferes with competition in the field of electronic debugging.

A. Intracorporate Conspiracy

As the Second Circuit has stated, Section 1 of the Sherman Act "is directed only at joint action. Ford Motor Co. v. Webster's Auto Sales, Inc., 361 F.2d 874, 878 (1st Cir. 1966). It does not prohibit independent business actions and decisions. . . . Fundamental then to any § 1 claim is the finding of an agreement, express

or otherwise between two or more persons." Modern Home Institute, Inc. v. Hartford Accident & Indemnity Co., 513 F.2d 102, 108-09 (2d Cir. 1975). In the instant case, the joint action which is allegedly violative of the Sherman Act is the policy of refusing to accept ads regarding debugging adopted by the American Telephone & Telegraph Company ("A.T.&T.") and followed by N.Y. Telco as well as most, if not all, of its other subsidiaries.

In United States v. Yellow Cab Co., 332 U.S. 218, 227 (1947), the Supreme Court held that

> The test of illegality under the Act is the presence or absence of an unreasonable restraint on interstate commerce. Such a restraint may result as readily from a conspiracy among those who are affiliated or integrated under common ownership as from a conspiracy among those who are otherwise independent . . . . The corporate interrelationships of the conspirators, in other words, are not determinative of the applicability of the Sherman Act.

While the precise contours of the intracorporate conspiracy doctrine are unclear, the Supreme Court has held that a parent and its wholly owned subsidiary can conspire. Perma Life Mufflers, Inc. v. International Parts Corp., 392 U.S. 134, 141-42 (1968). In the instant case the evidence regarding the establishment of the no-debugging ads policy "is sufficient to portray a plurality of actors concerting their efforts

toward a common end." George R. Whitten, Jr., Inc. v. Paddock Pool Bldg., Inc., 508 F.2d 547, 557 (1st Cir. 1974).

The affidavit of James R. Bennett, N.Y. Telco's Directory Supervisor-Field Operations, states that "A.T.& T. does not control Telco policy regarding the publication of Telco classified directories." While A.T.& T. does not "control" the policies of its subsidiaries as regards the publication of classified directories, its influence is strongly felt. Mr. Bennett himself, was "frankly surprised" (Affidavit at 17) when plaintiffs brought it to his attention that the classified directories of the Chesapeake & Potomac Telephone Co. as well as that of the Michigan Bell Telephone Company contained ads for debugging services. As Mr. Bennett's affidavit goes on to explain, however, these ads were the result of errors of oversight on the part of the telephone companies and according to the policy of both, will not appear in future directories.

More to the point was the testimony of William Caming, a member of A.T.& T.'s Legal Department, before the National Wiretap Commission. Mr. Caming's prepared statement included the following comments:

> For more than three decades, it has been Bell System policy to refuse to accept in the Yellow Pages of its telephone directories advertisements by private detective agencies and others, stating or implying that the services being offered include the use of wiretapping. . . . This standard, adopted by all Bell System Companies, was interpreted from the outset to make equally unacceptable so-called debugging advertising (i.e., advertising stating or implying electronic devices or services will be provided for the detection and removal of wiretaps and eavesdropping "bugs"), on the theory that those who can debug also possess the capability to bug and wiretap.

Exhibit A to Answering Affidavit of William Katz at 863. See also id. at 843-44. In response to a question asking Mr. Caming to clarify the meaning of the phrase "Bell System Policy", Mr. Caming stated:

> MR. CAMING: Generally speaking, in the area of security matters, the policy of the Bell System is set by the American Telephone & Telegraph Company after appropriate review and concurrence by the associated companies.
>
> For example, by way of graphic example, when Title III was enacted, we required procedures with respect to how to handle court-ordered wiretap requests. The initial procedures were prepared and carefully reviewed at ATOT [sic] and approved up to our highest levels of management. They were then presented to the presidents of each company at a joint conference, or I guess in this case they were sent to them after the conference. And their comments were invited and any suggested changes.
>
> They were received and reviewed, and then the final document was established, and it was

sent out as Bell System policy.

In the last analysis, ATOT [sic] establishes the policy in conjunction with its associated companies and bears the responsibility for it.

MR. FELDMAN: And does that mean that ATOT [sic] has enforcement power?

MR. CAMING: In the sense that all the companies of the Bell System are committed to the strongest possible protection of privacy of communication, there has not been any need for enforcement of policy. I might say, parenthetically, that in all but two companies we have the whole controlling interest stockwise, and in those two companies we have a very substantial shareholder interest.

In light of the above, the Court finds that the plaintiff has raised serious questions going to the merits regarding the existence of a conspiracy between A.T.& T., N.Y. Telco and the other companies in the Bell System. Mr. Caming's testimony stresses the fact that while A.T.& T. sets the initial policy, each subsidiary is free to accept or reject it. Viewed from this perspective, the subsidiaries clearly constitute independent entities capable of conspiring with A.T.& T. *

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* The fact that none of the co-conspirators compete with one another, in no way precludes a finding of conspiracy. Battle v. Liberty National Life Ins. Co., 493 F.2d 39, 44 (5th Cir. 1974).

B. Unreasonable Restraint of Trade

At the outset it must be recognized that the challenged practices relate solely to the defendants' actions in publishing classified directories. This case does not involve the highly regulated area of providing telephone services to the public, rather, it involves the completely unregulated activity of publishing classified directories. As Mr. Bennett of N.Y. Telco put it, "in its publication of Yellow Pages directories, Telco is essentially involved in a private enterprise publication activity." (Bennett Affidavit at 3). This enterprise is undertaken at great cost (the Manhattan Yellow Pages alone cost $7,568,000 to produce) and provides "[a]ctual and anticipated revenues to New York Telephone Company [which] . . . substantially exceed the costs of publication." (Bennett Affidavit at 5).

Having concluded that there was a conspiracy involving A.T.& T. and its subsidiaries, the question becomes whether or not the policy regarding debugging advertisements which resulted from that conspiracy is an unreasonable restraint on trade. In determining whether a given restraint is unreasonable, the guidelines set out by Mr. Justice Brandeis in Chicago Board of Trade v. United States, 246 U.S. 231, 238 (1918) give meaning to the

"rule of reason".

> [T]he legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; ts condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences.

In attempting to apply the above, the Court is hampered by the somewhat barren factual record produced by the plaintiffs. Nevertheless, sufficient facts have been adduced to convince this Court that there are serious questions going to the merits on the issue of whether the restraint in question is unreasonable in that its goal and its probable consequence is to restrain competition in the debugging service industry in the metropolitan area.

This is one of the rare antitrust cases wherein the question of the defendants' intent need not be inferred, but is established by the words of the defendants themselves. As Mr. Caming explained in his testimony before the National Wiretap Commission, the no-debugging ads policy had its genesis in the belief that those who are capable of debugging are also capable of bugging, and that in order to prevent bugging it was necessary to refuse to accept any ads dealing with debugging services. Stated another way, in an attempt to make it as difficult as possible for the public to find individuals who would engage in bugging, A.T.& T. decided and N.Y. Telco agreed that it was necessary to make it as difficult as possible for the public to find individuals who would engage in debugging. To utilize the terms "motive" and "intent"; the defendants' motive was to protect the public from bugging but their intent was to restrain the public, to the best of their ability, from contacting debuggers. Such an intent is, of course, anti-competitive. While there are no facts before this Court indicating that A.T.& T. and its subsidiaries are attempting to restrain the debugging industry so that they themselves can control it, the lack of a predatory motive cannot negate the fact that the restraint is intended to and does in fact suppress competition.

As to the precise impact of the no-debugging ads policy, plaintiffs' proof is at best scant. Nonetheless, the testimony of William Katz indicated that the firm of Dektor Counterintelligence & Security Inc. of Springfield, Virginia, which does have an ad in the Northern Virginia Yellow Pages for 1975 indicating that the firm provides "telephone security systems" and "countermeasure surveys and inspection", obtains approximately 60% of its debugging business from their ad in the Yellow Pages (Answering and Supplemental Affidavit of William Katz at 8). Additionally, Mr. Katz's testimony and affidavit indicate that the F.B.I., the Chamber of Commerce, the New York Police Department and New York Telephone itself, all refer callers inquiring about debugging services to the Yellow Pages or New York Telco.

While the proof in this case may eventually disclose that numerous individuals seeking debugging services somehow find private companies ready, willing and able to perform the service, the Court nonetheless believes that the probable consequence of defendants' policy is that many individuals seeking private debugging services end up using N.Y. Telco as a result of the difficulty encountered in finding other companies capable

of performing the service.

Finally, this Court finds that the defendants have made no showing that the restraint imposed does not exceed "the limits reasonably necessary" to accomplish their avowed end. United States v. Arnold, Schwinn & Co., 388 U.S. 365, 380 (1967). This Court need not hold the defendants to a least restrictive alternative test (see American Motor Inns, Inc. v. Holiday Inns, Inc., 521 F.2d 1230, 1248-50 (3d Cir. 1975)) in order to find that the no-debugging ads policy as a means of controlling illegal wiretapping paints with too broad a brush.

The Court is satisfied that the above showing is sufficient on this motion for a preliminary injunction to present serious questions going to the merits on the issue of the extent to which the defendants' policy restrains and suppresses the debugging business.

THE BALANCE OF HARDSHIPS

The balance of the hardships in this case tips decidedly in favor of (it may be more apt to say against) the plaintiffs. Mr. Katz testified that he and his partner had projected that 50 to 60 percent of their income would be generated by counter-measure business

(i.e., the detection of electronic devices in the home, office and telephone). The exclusion of their ad from the Queens Yellow Pages will undoubtedly result in harm to their fledgling business, a harm which will be quite difficult to compute in terms of money damages. Further, Mr. Katz's testimony and affidavit state that the cost of advertising in alternative media in order to reach a comparable number of potential clients would be prohibitive.

From the defendants' perspective, the issuance of the instant injunction precludes them from enforcing a policy which they believe is in the public interest. However, the existence of one such ad at this time will not significantly injure the defendants. As the proof indicated, it sometimes occurs that as a result of an oversight, ads similar to the plaintiffs' appear in various yellow pages. Additionally, there has been no allegation by the defendants that these plaintiffs intend to engage in any illegal wiretapping. Finally, if the defendants prevail at trial, they will be able to remove the offending ad from Yellow Pages next year and thus end any harm suffered. From the plaintiffs' perspective, however, the impact of exclusion from this year's book will be felt not only this year but in each succeeding

year in that every client they fail to get means some unquantifiable number of other clients they will not acquire in the future as a result of referrals or old customers returning.

For all of the above reasons,* the Court concludes that the plaintiffs have clearly shown serious questions going to the merits which are a fair ground for litigation, and a balance of hardships tipping decidedly in their favor.

The foregoing constitute the Court's findings of fact and conclusions of law upon plaintiffs' application for a preliminary injunction.

SO ORDERED.

John M. Cannella

JOHN M. CANNELLA
United States District Judge

Dated: New York, N.Y.
February 26, 1976.

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* In light of the Court's finding on the Section 1 claim, plaintiffs' other claims need not be addressed at this time.

(13)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

TRIEBWASSER & KATZ, a Partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiffs,

-against-

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION,

Defendants.

----------X

ORDER

76 Civ. 770 (JMC)

CANNELLA, D.J.:

The attached affidavit of George Ashley being in compliance with the dictates of Rule 4(c) of the General Rules of the United States District Court for the Southern District of New York,

IT IS ORDERED that the firm of Cleary, Gottlieb, Steen & Hamilton are substituted for George E. Ashley as attorneys for defendant American Telephone & Telegraph Company and the Reuben H. Donnelly Corporation, and

IT IS FURTHER ORDERED that the firm of Cleary, Gottlieb, Steen & Hamilton are added as co-counsel with Mr. Ashley for the defendant New York Telephone Company.

SO ORDERED.

Dated: New York, N.Y.
March 5, 1976.

MAR 5 1976

John M. Cannella
JOHN M. CANNELLA, U.S.D.J.

U.S. DISTRICT COURT
FILED
MAR 5 1976
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

TRIEBWASSER AND KATZ, a Partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiff,

-against-

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLY CORPORATION,

Defendants.

- -x

NOTICE OF APPEAL

76 Civ. 770 (JMC)

Notice is hereby given that American Telephone and Telegraph Company, New York Telephone Company and Reuben H. Donnelley Corporation, the defendants above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the order granting plaintiff's motion for a preliminary injunction, entered in this action on February 25, 1976 and modified on February 26, 1976.

Dated: New York, New York
March 5, 1976

CLEARY, GOTTLIEB, STEEN & HAMILTON

By _____
A Member of the Firm

One State Street Plaza
New York, New York 10004
(212) 344-0600
Attorneys for Defendants
American Telephone and Telegraph
Company, New York Telephone Company
Reuben H. Donnelley Corporation

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 12th day of March, one thousand nine hundred and seventy six.

- -x

TRIEBWASSER & KATZ, a partnership consisting of JONAH TRIEBWASSER and WILLIAM KATZ,

Plaintiffs-Appellees,

-against-

AMERICAN TELEPHONE & TELEGRAPH COMPANY, NEW YORK TELEPHONE COMPANY and REUBEN H. DONNELLEY CORPORATION,

Defendants-Appellants.

ORDER

76-7675

- -x

It is hereby ordered that the motion made herein by counsel for the defendants-appellants dated March 5, 1976 for leave to have an expedited appeal in this case be, and the same hereby is, granted.

It is further ordered that:

1. Appellants' brief and appendix be served and filed on or before March 24, 1976;

2. Appellees' brief be served and filed on or before April 6, 1976;

3. Appellants' reply brief be served and filed on or before April 12, 1976;

4. Oral argument to be had on April 14, 1976, or as soon thereafter as ordered by this Court.

Murray Gurfein
Circuit Judge

COPY RECEIVED

DATE: 3/24/76 TIME: 2:00

BRASHICH, FINLEY AND POSTEL

BY Penelope Yannato